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SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

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PART 301—PROCEDURE AND ADMINISTRATION

Part 301 as set forth below is a republication of all of the regulations issued under Subtitle F of the Internal Revenue Code of 1954 prior to September 1, 1960, relating to procedure and administration. Contained therein are regulations under Chapters 61, 62, 69, 75, 76, and 80 of the Internal Revenue Code which have not heretofore been promulgated as Treasury decisions.

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AUTHORITY: §§ 301.6001 to 301.7852 issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805. Statutory provisions interpreted or applied are cited to text in parentheses.

NOTE: In the text of this part, integral section references are to sections of the Internal Revenue Code of 1954; decimal section references are to sections of the Code of Federal Regulations.

References in the text to the "Code" are references to the Internal Revenue Code of 1954.

Information and Returns

RETURNS AND RECORDS

RECORDS, STATEMENTS, AND SPECIAL RETURNS

§ 301.6001 Statutory provisions; notice or regulations requiring records, statements, and special returns.

SEC. 6001. *Notice or regulations requiring records, statements, and special returns.* Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

§ 301.6001–1 Notice or regulations requiring records, statements, and special returns.

For provisions requiring records, statements, and special returns, see the regulations relating to the particular tax.

TAX RETURNS OR STATEMENTS

General Requirement

§ 301.6011 Statutory provisions; general requirement of return, statement, or list.

SEC. 6011. *General requirement of return, statement, or list*—(a) *General rule.* When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) *Identification of taxpayer.* The Secretary or his delegate is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

(c) *Return of retailers excise taxes by suppliers*—(1) *General rule.* Under regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may enter into an agreement with any supplier with respect to any retailers excise tax imposed by chapter 31 (not including the taxes imposed by section 4041), whereby such supplier will be liable to return and pay such tax (for the period for which such agreement is in effect) for the person who (without regard to this subsection) is required to return and pay such tax. Except as provided in the regulations prescribed under this subsection—

(A) All provisions of law (including penalties) applicable in respect of the person who (without regard to this subsection) is required to return and pay the tax shall apply to the supplier entering into the agreement, and

(B) The person who (without regard to this subsection) is required to return and pay such tax shall remain subject to all provisions of law (including penalties) applicable in respect of such person.

(2) *Limitations on agreement authority in the case of house-to-house salesmen.* In the case of sales, by house-to-house salesmen, of articles subject to tax under chapter 31 (other than section 4041) which are supplied by a manufacturer or distributor, if the manufacturer or distributor establishes the retail list price at which such articles are to be sold, the Secretary or his delegate shall not, as a condition to entering into an agreement under paragraph (1), require—

(A) That such house-to-house salesmen execute powers of attorney making such manufacturer or distributor an agent for the return and payment of such tax,

(B) That the manufacturer or distributor make separate returns with respect to each such house-to-house salesman, or

(C) That the manufacturer or distributor assume any liability for tax on articles supplied by any person other than such manufacturer or distributor.

(d) *Income, estate, and gift taxes.* For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see sections 6012 to 6019, inclusive.

[Sec. 6011 as amended by sec. 161, Excise Tax Technical Changes Act 1958 (72 Stat. 1305)]

§ 301.6011–1 General requirement of return, statement, or list.

For provisions requiring returns, statements, or lists, see the regulations relating to the particular tax.

Income Tax Returns

§ 301.6012 Statutory provisions; persons required to make returns of income.

SEC. 6012. *Persons required to make returns of income*—(a) *General rule.* Returns with respect to income taxes under subtitle A shall be made by the following:

(1) Every individual having for the taxable year a gross income of $600 or more (except that any individual who has attained the age of 65 before the close of his taxable year shall be required to make a return only if he has for the taxable year a gross income of $1,200 or more);

(2) Every corporation subject to taxation under subtitle A;

(3) Every estate the gross income of which for the taxable year is $600 or more;

(4) Every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income; and

(5) Every estate or trust of which any beneficiary is a nonresident alien;

except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary or his delegate, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

(b) *Returns made by fiduciaries and receivers*—(1) *Returns of decedents.* If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.

(2) *Persons under a disability.* If an individual is unable to make a return required under subsection (a) or section 6015(a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

(3) *Receivers, trustees and assignees for corporations.* In a case where a receiver, trustee in bankruptcy, or assignee, by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the return of income for such corporation in the same manner and form as corporations are required to make such returns.

(4) *Returns of estates and trusts.* Returns of an estate or a trust shall be made by the fiduciary thereof.

(5) *Joint fiduciaries.* Under such regulations as the Secretary or his delegate may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this paragraph shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him to make the return, and that the return is, to the best of his knowledge and belief, true and correct.

(c) *Certain income earned abroad.* For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 911 (relating to earned income from sources without the United States).

(d) *Consolidated returns.* For provisions relating to consolidated returns by affiliated corporations, see chapter 6.

[Sec. 6012 as amended by sec. 72(a), Technical Amendments Act 1958 (72 Stat. 1660)]

§ 301.6012–1 Persons required to make returns of income.

For provisions with respect to persons required to make returns of income, see §§ 1.6012–1 to 1.6012–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6013 Statutory provisions; joint returns of income tax by husband and wife.

SEC. 6013. *Joint returns of income tax by husband and wife*—(a) *Joint returns.* A husband and wife may make a single return jointly of income taxes under subtitle A, even though one of the spouses has neither gross income nor deductions, except as provided below:

(1) No joint return shall be made if either the husband or wife at any time during the taxable year is a nonresident alien;

(2) No joint return shall be made if the husband and wife have different taxable years; except that if such taxable years begin on the same day and end on different days because of the death of either or both, then the joint return may be made with respect to the taxable year of each. The above exception shall not apply if the surviving spouse remarries before the close of his taxable year, nor if the taxable year of either spouse is a fractional part of a year under section 443(a)(1);

(3) In the case of death of one spouse or both spouses the joint return with respect to the decedent may be made only by his executor or administrator; except that in the case of the death of one spouse the joint return may be made by the surviving spouse with respect to both himself and the decedent if no return for the taxable year has been made by the decedent, no executor or administrator has been appointed, and no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse. If an executor or administrator of the decedent is appointed after the making of the joint return by the surviving spouse, the executor or administrator may disaffirm such joint return by making, within 1 year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

(b) *Joint return after filing separate return*—(1) *In general.* Except as provided in paragraph (2), if an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse under subsection (a) and the time prescribed by law for filing the return for such taxable year has expired, such individual and his spouse may nevertheless make a joint return for such taxable year. A joint return filed by the husband and wife under this subsection shall constitute the return of the husband and wife for such taxable year, and all payments, credits, refunds, or other repayments made or allowed with respect to the separate return of either spouse for such taxable year shall be taken into account in determining the extent to which the tax based upon the joint return has been paid. If a joint return is made under this subsection, any election (other than the election to file a separate return) made by either spouse in his separate return for such taxable year with respect to the treatment of any income, deduction, or credit of such spouse shall not be changed in the making of the joint return where such election would have been irrevocable if the joint return had not been made. If a joint return is made under this subsection after the death of either spouse, such return with respect to the decedent can be made only by his executor or administrator.

(2) *Limitations for making of election.* The election provided for in paragraph (1) may not be made—

(A) Unless there is paid in full at or before the time of the filing of the joint return the amount shown as tax upon such joint return; or

(B) After the expiration of 3 years from the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse); or

(C) After there has been mailed to either spouse, with respect to such taxable year, a notice of deficiency under section 6212, if the spouse, as to such notice, files a petition with the Tax Court of the United States within the time prescribed in section 6213; or

(D) After either spouse has commenced a suit in any court for the recovery of any part of the tax for such taxable year; or

(E) After either spouse has entered into a closing agreement under section 7121 with respect to such taxable year, or after any civil or criminal case arising against either spouse with respect to such taxable year has been compromised under section 7122.

(3) *When return deemed filed*—(A) *Assessment and collection.* For purposes of section 6501 (relating to periods of limitations on assessment and collection), and for purposes of section 6651 (relating to delinquent returns), a joint return made under this subsection shall be deemed to have been filed—

(i) Where both spouses filed separate returns prior to making the joint return—on the date the last separate return was filed (but not earlier than the last date prescribed by law for filing the return of either spouse);

(ii) Where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had less than $600 of gross income ($1,200 in case such spouse was 65 or over) for such taxable year—on the date of the filing of such separate return (but not earlier than the last date prescribed by law for the filing of such separate return); or

(iii) Where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had gross income of $600 or more ($1,200 in case such spouse was 65 or over) for such taxable year—on the date of the filing of such joint return.

(B) *Credit or refund.* For purposes of section 6511, a joint return made under this subsection shall be deemed to have been filed on the last date prescribed by law for filing the return for such taxable year (determined without regard to any extension of time granted to either spouse).

(4) *Additional time for assessment.* If a joint return is made under this subsection, the periods of limitations provided in sections 6501 and 6502 on the making of assessments and the beginning of levy or a proceeding in court for collection shall with respect to such return include one year immediately after the date of the filing of such joint return (computed without regard to the provisions of paragraph (3)).

(5) *Additions to the tax and penalties*—(A) *Additions to the tax.* Where the amount shown as the tax by the husband and wife on a joint return made under this subsection exceeds the aggregate of the amounts shown as the tax upon the separate return of each spouse—

(i) *Negligence.* If any part of such excess is attributable to negligence or intentional disregard of rules and regulations (but without intent to defraud) at the time of the making of such separate return, then 5 percent of the total amount of such excess shall be added to the tax;

(ii) *Fraud.* If any part of such excess is attributable to fraud with intent to evade tax at the time of the making of such separate return, then 50 percent of the total amount of such excess shall be added to the tax.

(B) *Criminal penalty.* For purposes of section 7206 (1) and (2) and section 7207 (relating to criminal penalties in the case of fraudulent returns) the term "return" includes a separate return filed by a spouse with respect to a taxable year for which a joint return is made under this subsection after the filing of such separate return.

(c) *Treatment of joint return after death of either spouse.* For purposes of sections 21, 443, and 7851(a)(1)(A), where the husband and wife have different taxable years because of the death of either spouse, the joint return shall be treated as if the taxable years of both spouses ended on the date of the closing of the surviving spouse's taxable year.

(d) *Definitions.* For purposes of this section—

(1) The status as husband and wife of two individuals having taxable years beginning on the same day shall be determined—

(A) If both have the same taxable year—as of the close of such year; and

(B) If one dies before the close of the taxable year of the other—as of the time of such death; and

(2) An individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married; and

(3) If a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

[Sec. 6013 as amended by sec. 73, Technical Amendments Act 1958 (72 Stat. 1660)]

§ 301.6013–1 Joint returns of income tax by husband and wife.

For provisions with respect to joint returns of income tax by husband and wife, see §§ 1.6013–1 to 1.6013–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6014 Statutory provisions; income tax return—tax not computed by taxpayer.

SEC. 6014. *Income tax return—tax not computed by taxpayer*—(a) *Election by taxpayer.* An individual entitled to elect to pay the tax imposed by section 3 whose gross income is less than $5,000 and includes no income other than remuneration for services performed by him as an employee, dividends or interest, and whose gross income other than wages, as defined in section 3401(a), does not exceed $100, shall at his election not be required to show on the return the tax imposed by section 1. Such election shall be made by using the form prescribed for purposes of this section and shall constitute an election to pay the tax imposed by section 3. In such case the tax shall be computed by the Secretary or his delegate who shall mail to the taxpayer a notice stating the amount determined as payable. In determining the amount payable, the credit against such tax provided for by section 34 or 37 shall not be allowed. In the case of a head of household (as defined in section 1(b)) or a surviving spouse (as defined in section 2(b)) electing the benefits of this subsection, the tax shall be computed by the Secretary or his delegate without regard to the taxpayer's status as a head of household or as a surviving spouse.

(b) *Regulations.* The Secretary or his delegate shall prescribe regulations for carrying out this section, and such regulations may provide for the application of the rules of this section to cases where the gross income includes items other than those enumerated by subsection (a), to cases where the gross income from sources other than wages on which the tax has been withheld

at the source is more than $100 but not more than $200, and to cases where the gross income is $5,000 or more but not more than $5,200. Such regulations shall provide for the application of this section in the case of husband and wife, including provisions determining when a joint return under this section may be permitted or required, whether the liability shall be joint and several, and whether one spouse may make return under this section and the other without regard to this section.

§ 301.6014–1 Income tax return—tax not computed by taxpayer.

For provisions relating to the use of Form 1040A by taxpayers with gross income of less than $5,000, see § 1.6014–1 of this chapter (Income Tax Regulations).

§ 301.6015 Statutory provisions; declaration of estimated income tax by individuals.

SEC. 6015. *Declaration of estimated income tax by individuals*—(a) *Requirement of declaration.* Every individual (other than a nonresident alien with respect to whose wages, as defined in section 3401(a), withholding under chapter 24 is not made applicable, but including every alien individual who is a resident of Puerto Rico during the entire taxable year) shall make a declaration of his estimated tax for the taxable year if—

(1) The gross income for the taxable year can reasonably be expected to consist of wages (as defined in section 3401(a)) and of not more than $100 from sources other than such wages, and can reasonably be expected to exceed—

(A) $5,000, in the case of a single individual other than a head of a household (as defined in section 1(b)(2)) or a surviving spouse (as defined in section 2(b)) or in the case of a married individual not entitled to file a joint declaration with his spouse;

(B) $10,000, in the case of a head of a household (as defined in section 1(b)(2)) or a surviving spouse (as defined in section 2(b)); or

(C) $5,000 in the case of a married individual entitled under subsection (b) to file a joint declaration with his spouse, and the aggregate gross income of such individual and his spouse for the taxable year can reasonably be expected to exceed $10,000; or

(2) The gross income can reasonably be expected to include more than $100 from sources other than wages (as defined in section 3401(a)) and can reasonably be expected to exceed the sum of—

(A) The amount obtained by multiplying $600 by the number of exemptions to which he is entitled under section 151 plus

(B) $400.

(b) *Joint declaration by husband and wife.* In the case of a husband and wife, a single declaration under this section may be made by them jointly, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if either the husband or the wife is a nonresident alien, if they are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife, or may be divided between them.

(c) *Estimated tax.* For purposes of this title, in the case of an individual, the term "estimated tax" means the amount which the individual estimates as the amount of the income tax imposed by chapter 1 for the taxable year, minus the amount which the individual estimates as the sum of any credits against tax provided by part IV of subchapter A of chapter 1.

(d) *Contents of declaration.* The declaration shall contain such pertinent information as the Secretary or his delegate may by forms or regulations prescribe.

(e) *Amendment of declaration.* An individual may make amendments of a declaration filed during the taxable year under regulations prescribed by the Secretary or his delegate.

(f) *Return as declaration or amendment.* If on or before January 31 (or February 15, in the case of an individual referred to in section 6073(b), relating to income from farming) of the succeeding taxable year the taxpayer files a return, for the taxable year for which the declaration is required, and pays in full the amount computed on the return as payable, then, under regulations prescribed by the Secretary or his delegate—

(1) If the declaration is not required to be filed during the taxable year, but is required to be filed on or before January 15, such return shall be considered as such declaration; and

(2) If the tax shown on the return (reduced by the sum of the credits against tax provided by part IV of subchapter A of chapter 1) is greater than the estimated tax shown in a declaration previously made, or in the last amendment thereof, such return shall be considered as the amendment of the declaration permitted by subsection (e) to be filed on or before January 15.

In the application of this subsection in the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the 15th or last day of the months specified in this subsection, the 15th or last day of the months which correspond thereto.

(g) *Short taxable years.* An individual with a taxable year of less than 12 months shall make a declaration in accordance with regulations prescribed by the Secretary or his delegate.

(h) *Estates and trusts.* The provisions of this section shall not apply to an estate or trust.

(i) *Applicability.* This section shall be applicable only with respect to taxable years beginning after December 31, 1954; and sections 58, 59, and 60 of the Internal Revenue Code of 1939 shall continue in force with respect to taxable years beginning before January 1, 1955.

[Sec. 6015 as amended by sec. 74, Technical Amendments Act 1958 (72 Stat. 1660)]

§ 301.6015–1 Declaration of estimated income tax by individuals.

For provisions relating to requirement of declarations of estimated income tax by individuals, see §§ 1.6015(a)–1 to 1.6015(i)–1, inclusive, of this chapter (Income Tax Regulations).

§ 301.6016 Statutory provisions; declarations of estimated income tax by corporations.

SEC. 6016. *Declarations of estimated income tax by corporations*—(a) *Requirement of declaration.* Every corporation subject to taxation under section 11 or 1201(a), or subchapter L of chapter 1 (relating to insurance companies), shall make a declaration of estimated tax under chapter 1 for the taxable year if its income tax imposed by section 11 or 1201(a), or such subchapter L, for such taxable year, reduced by the credits against tax provided by part IV of subchapter A of chapter 1, can reasonably be expected to exceed $100,000.

(b) *Estimated tax.* For purposes of this title, in the case of a corporation, the term "estimated tax" means the excess of—

(1) The amount which the corporation estimates as the amount of the income tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable, over

(2) The sum of—

(A) $100,000, and

(B) The amount which the corporation estimates as the sum of any credits against tax provided by part IV of subchapter A of chapter 1.

(c) *Contents of declaration.* The declaration shall contain such pertinent information as the Secretary or his delegate may by forms or regulations prescribe.

(d) *Amendment of declaration.* A corporation may make amendments of a declaration filed during the taxable year under regulations prescribed by the Secretary or his delegate.

(e) *Short taxable year.* A corporation with a taxable year of less than 12 months shall make a declaration in accordance with regulations prescribed by the Secretary or his delegate.

(f) *Applicability.* This section shall apply only with respect to taxable years ending on or after December 31, 1955.

§ 301.6016–1 Declarations of estimated income tax by corporations.

For provisions concerning the requirement of declarations of estimated income tax by corporations, see §§ 1.6016–1 to 1.6016–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6017 Statutory provisions; self-employment tax returns.

SEC. 6017. *Self-employment tax returns.* Every individual (other than a nonresident alien individual) having net earnings from self-employment of $400 or more for the taxable year shall make a return with respect to the self-employment tax imposed by chapter 2. In the case of a husband and wife filing a joint return under section 6013, the tax imposed by chapter 2 shall not be computed on the aggregate income but shall be the sum of the taxes computed under such chapter on the separate self-employment income of each spouse.

§ 301.6017–1 Self-employment tax returns.

For provisions relating to the requirement of self-employment tax returns, see § 1.6017–1 of this chapter (Income Tax Regulations).

Estate and Gift Tax Returns

§ 301.6018 Statutory provisions; estate tax returns.

SEC. 6018. *Estate tax returns*—(a) *Returns by executor*—(1) *Citizens or residents.* In all cases where the gross estate at the death of a citizen or resident exceeds $60,000, the executor shall make a return with respect to the estate tax imposed by subtitle B.

(2) *Nonresidents not citizens of the United States.* In the case of the estate of every nonresident not a citizen of the United States if that part of the gross estate which is situated in the United States exceeds $2,000, the executor shall make a return with respect to the estate tax imposed by subtitle B.

(b) *Returns by beneficiaries.* If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the Secretary or his delegate such person shall in like manner make a return as to such part of the gross estate.

§ 301.6018–1 Estate tax returns.

For provisions relating to requirement of estate tax returns, see §§ 20.6018–1 to 20.6018–4, inclusive, of this chapter (Estate Tax Regulations).

§ 301.6019 Statutory provisions; gift tax returns.

SEC. 6019. *Gift tax returns*—(a) *In general.* Any individual who in any calendar year makes any transfers by gift (except those which under section 2503(b) are not to be included in the total amount of gifts for such year) shall make a return with respect to the gift tax imposed by subtitle B.

(b) *Tenancy by the entirety.* For provisions relating to requirement of return in the case of election as to the treatment of gift by creation of tenancy by the entirety, see section 2515(c).

§ 301.6019–1 Gift tax returns.

For provisions relating to requirement of gift tax returns, see §§ 25.6019–1 to 25.6019–4, inclusive, of this chapter (Gift Tax Regulations).

Miscellaneous Provisions

§ 301.6020 Statutory provisions; returns prepared for or executed by Secretary.

SEC. 6020. *Returns prepared for or executed by Secretary*—(a) *Preparation of return by Secretary.* If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary or his delegate may prepare such return, which, being signed by such person, may be received by the Secretary or his delegate as the return of such person.

(b) *Execution of return by Secretary*—(1) *Authority of Secretary to execute return.* If any person fails to make any return (other than a declaration of estimated tax required under section 6015 or 6016) required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary or his delegate shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) *Status of returns.* Any return so made and subscribed by the Secretary or his delegate shall be prima facie good and sufficient for all legal purposes.

§ 301.6020–1 Returns prepared or executed by district directors or other internal revenue officers.

(a) *Preparation of returns*—(1) *In general.* If any person required by the Code or by the regulations prescribed thereunder to make a return fails to make such return, it may be prepared by the district director or other authorized internal revenue officer or employee provided such person consents to disclose all information necessary for the preparation of such return. The return upon being signed by the person required to make it shall be received by the district director as the return of such person.

(2) *Responsibility of person for whom return is prepared.* A person for whom a return is prepared in accordance with subparagraph (1) of this paragraph shall for all legal purposes remain responsible for the correctness of the return to the same extent as if the return had been prepared by him.

(b) *Execution of returns*—(1) *In general.* If any person required by any internal revenue law or by the regulations prescribed thereunder to make a return (other than a declaration of estimated tax required under section 6015 or 6016) fails to make such return at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the district director or other authorized internal revenue officer or employee shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) *Status of returns.* Any return made in accordance with subparagraph (1) of this paragraph and subscribed by the district director or other authorized internal revenue officer or employee shall be prima facie good and sufficient for all legal purposes.

(3) *Deficiency procedures.* For deficiency procedures in the case of income, estate, and gift taxes, see sections 6211 to 6216, inclusive, and §§ 301.6211–1 to 301.6215–1, inclusive.

(c) *Cross references.* (1) For provisions that a return executed by a district director or other authorized internal revenue officer or employee will not start the running of the period of limitations on assessment and collection, see section 6501(b)(3) and paragraph (c) of § 301.6501(b)–1.

(2) For additions to the tax and additional amounts for failure to file returns, see section 6651 and § 301.6651–1, and section 6652 and § 301.6652–1, respectively.

(3) For additions to the tax for failure to pay tax, see section 6653 and § 301.6653–1.

(4) For criminal penalties for willful failure to make returns, see sections 7201, 7202, and 7203.

(5) For criminal penalties for willfully making false or fraudulent returns, see sections 7206 and 7207.

(6) For authority to examine books and witnesses, see section 7602 and § 301.7602–1.

§ 301.6021 Statutory provisions; listing by Secretary of taxable objects owned by nonresidents of internal revenue districts.

SEC. 6021. *Listing by Secretary of taxable objects owned by nonresidents of internal revenue districts.* Whenever there are in any internal revenue district any articles subject to tax, which are not owned or possessed by or under the care or control of any person within such district, and of which no list has been transmitted to the Secretary or his delegate, as required by law or by regulations prescribed pursuant to law, the Secretary or his delegate shall enter the premises where such articles are situated, shall make such inspection of the articles as may be necessary and make lists of the same, according to the forms prescribed. Such lists, being subscribed by the Secretary or his delegate, shall be sufficient lists of such articles for all purposes.

§ 301.6021–1 Listing by district directors of taxable objects owned by nonresidents of internal revenue districts.

Whenever there are in any internal revenue district any articles subject to tax, which are not owned or possessed by or under the care or control of any person within such district, and of which no list has been transmitted to the district director, as required by law or by regulations prescribed pursuant to law, the district director, or other authorized internal revenue officer or employee, shall enter the premises where such articles are situated, shall make such inspection of the articles as may be necessary, and shall make lists of the same according to the forms prescribed. Such lists, being subscribed by the district director or other authorized internal revenue officer or employee, shall be sufficient lists of such articles for all purposes.

Information Concerning Persons Subject to Special Provisions

§ 301.6031 Statutory provisions; return of partnership income.

SEC. 6031. *Return of partnership income.* Every partnership (as defined in section 761(a)) shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by subtitle A, and such other information for the purpose of carrying out the provisions of subtitle A as the Secretary or his delegate may by forms and regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual.

§ 301.6031–1 Return of partnership income.

For provisions relating to the requirement of returns of partnership income, see § 1.6031–1 of this chapter (Income Tax Regulations).

§ 301.6032 Statutory provisions; returns of banks with respect to common trust funds.

SEC. 6032. *Returns of banks with respect to common trust funds.* Every bank (as defined in section 581) maintaining a common trust fund shall make a return for each taxable year, stating specifically, with respect to such fund, the items of gross income and the deductions allowed by subtitle A, and shall include in the return the names and addresses of the participants who would be entitled to share in the taxable income if distributed and the amount of the proportionate share of each participant. The return shall be executed in the same manner as a return made by a corporation pursuant to the requirements of sections 6012 and 6062.

§ 301.6032–1 Returns of banks with respect to common trust funds.

For provisions relating to requirement of returns of banks with respect to common trust funds, see § 1.6032–1 of this chapter (Income Tax Regulations).

§ 301.6033 Statutory provisions; returns by exempt organizations.

SEC. 6033. *Returns by exempt organizations*—(a) *General.* Every organization, except as hereinafter provided, exempt from taxation under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the provisions of subtitle A

as the Secretary or his delegate may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations, as the Secretary or his delegate may from time to time prescribe, except that, in the discretion of the Secretary or his delegate, an organization described in section 401(a) may be relieved from stating in its return any information which is reported in returns filed by the employer which established such organization. No such annual return need be filed under this subsection by any organization exempt from taxation under the provisions of section 501(a)—

(1) Which is a religious organization described in section 501(c)(3); or

(2) Which is an educational organization described in section 501(c)(3), if such organization normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on; or

(3) Which is a charitable organization, or an organization for the prevention of cruelty to children or animals, described in section 501(c)(3), if such organization is supported, in whole or in part, by funds contributed by the United States or any State or political subdivision thereof, or is primarily supported by contributions of the general public; or

(4) Which is an organization described in section 501(c)(3), if such organization is operated, supervised, or controlled by or in connection with a religious organization described in paragraph (1); or

(5) Which is an organization described in section 501(c)(8); or

(6) Which is an organization described in section 501(c)(1), if such organization is a corporation wholly owned by the United States or any agency or instrumentality thereof, or a wholly owned subsidiary of such a corporation.

(b) *Certain organizations described in section 501(c)(3).* Every organization described in section 501(c)(3) which is subject to the requirements of subsection (a) shall furnish annually information, at such time and in such manner as the Secretary or his delegate may by forms or regulations prescribe, setting forth—

(1) Its gross income for the year,

(2) Its expenses attributable to such income and incurred within the year,

(3) Its disbursements out of income within the year for the purposes for which it is exempt,

(4) Its accumulation of income within the year,

(5) Its aggregate accumulations of income at the beginning of the year,

(6) Its disbursements out of principal in the current and prior years for the purposes for which it is exempt,

(7) A balance sheet showing its assets, liabilities, and net worth as of the beginning of such year, and

(8) The total of the contributions and gifts received by it during the year.

(c) *Cross reference.* For provisions relating to statements, etc., regarding exempt status of organizations, see section 6001.

[Sec. 6033 as amended by sec. 75(b), Technical Amendments Act 1958 (72 Stat. 1661)]

§ 301.6033–1 Returns by exempt organizations.

For provisions relating to the requirement of returns by exempt organizations, see § 1.6033–1 of this chapter (Income Tax Regulations).

§ 301.6034 Statutory provisions; returns by trusts claiming charitable deductions under section 642(c).

SEC. 6034. *Returns by trusts claiming charitable deductions under section 642(c)*—(a) *General rule.* Every trust claiming a charitable, etc., deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary or his delegate may by forms or regulations prescribe, setting forth—

(1) The amount of the charitable, etc., deduction taken under section 642(c) within such year (showing separately the amount of such deduction which was paid out and the amount which was permanently set aside for charitable, etc., purposes during such year),

(2) The amount paid out within such year which represents amounts for which charitable, etc., deductions under section 642(c) have been taken in prior years,

(3) The amount for which charitable, etc., deductions have been taken in prior years but which has not been paid out at the beginning of such year,

(4) The amount paid out of principal in the current and prior years for charitable, etc., purposes,

(5) The total income of the trust within such year and the expenses attributable thereto, and

(6) A balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

(b) *Exception.* This section shall not apply in the case of a taxable year if all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries.

§ 301.6034–1 Returns by trusts claiming charitable or other deductions under section 642(c).

For provisions relating to the requirement of returns by trusts claiming charitable or other deductions under section 642(c), see § 1.6034–1 of this chapter (Income Tax Regulations).

§ 301.6035 Statutory provisions; returns of officers, directors, and shareholders of foreign personal holding companies.

SEC. 6035. *Returns of officers, directors, and shareholders of foreign personal holding companies*—(a) *Officers and directors*—(1) *Monthly returns.* On the 15th day of each month each individual who on such day is an officer or a director of a foreign corporation which, with respect to its taxable year preceding the taxable year in which such month occurs, was a foreign personal holding company (as defined in section 552), shall make a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Secretary or his delegate shall by forms or regulations prescribe as necessary for carrying out the provisions of this title. The Secretary or his delegate may by regulations prescribe, as the period with respect to which returns shall be made, a longer period than a month. In such case the return shall be due on the 15th day of the succeeding period, and shall be made by the individuals who on such day are officers or directors of the corporation.

(2) *Annual returns.* On the 60th day after the close of the taxable year of a foreign personal holding company (as defined in section 552), each individual who on such 60th day is an officer or director of the corporation shall make a return setting forth—

(A) In complete detail the gross income, deductions and credits, taxable income, and undistributed foreign personal holding company income of such foreign personal holding company for such taxable year; and

(B) The same information with respect to such taxable year as is required in paragraph (1), except that if all the required returns with respect to such year have been filed under paragraph (1), no information under this subparagraph need be set forth in the return filed under this paragraph.

(b) *Shareholders*—(1) *Monthly returns.* On the 15th day of each month each United States shareholder, by or for whom 50 percent or more in value of the outstanding stock of a foreign corporation is owned directly or indirectly (including, in the case of an individual, stock owned by the members of his family as defined in section 544(a)(2)), if such foreign corporation with respect to its taxable year preceding the taxable year in which such month occurs was a foreign personal holding company (as defined in section 552), shall make a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Secretary or his delegate shall by forms or regulations prescribe as necessary for carrying out the provisions of this title. The Secretary or his delegate may by regulations prescribe, as the period with respect to which returns shall be made, a longer period than a month. In such case the return shall be due on the 15th day of the succeeding period, and shall be made by the persons who on such day are United States shareholders.

(2) *Annual returns.* On the 60th day after the close of the taxable year of a foreign personal holding company (as defined in section 552) each United States shareholder by or for whom on such 60th day 50 percent or more in value of the outstanding stock of such company is owned directly or indirectly (including, in the case of an individual, stock owned by members of his family as defined in section 544(a)(2)) shall make a return setting forth the same information with respect to such taxable years as is required in paragraph (1), except that, if all the required returns with respect to such year have been made under paragraph (1), no return shall be required under this paragraph.

§ 301.6035–1 Returns of officers, directors, and shareholders of foreign personal holding companies.

For provisions relating to the requirement of returns by officers, directors, and shareholders of foreign personal holding companies, see §§ 1.6035–1 to 1.6035–3, inclusive, of this chapter (Income Tax Regulations).

§ 301.6036 [Reserved]

§ 301.6037 Statutory provisions; return of electing small business corporation.

SEC. 6037. *Return of electing small business corporation.* Every electing small business corporation (as defined in section 1371(a)(2)) shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by subtitle A, the names and addresses of all persons owning stock in the corporation at any time during the taxable year, the number of shares of stock owned by each shareholder at all times during the taxable year, the amount of money and other property distributed by the corporation during the taxable year to each shareholder, the

date of each such distribution, and such other information, for the purpose of carrying out the provisions of subchapter S of chapter 1, as the Secretary or his delegate may by forms and regulations prescribe. Any return filed pursuant to this section shall, for purposes of chapter 66 (relating to limitations), be treated as a return filed by the corporation under section 6012.

[Sec. 6037 as added by sec. 64(c), Technical Amendments Act 1958 (72 Stat. 1656)]

§ 301.6037–1 Return of electing small business corporation.

For provisions relating to requirement of return of electing small business corporation, see § 1.6037–1 of this chapter (Income Tax Regulations).

§ 301.6038 Statutory provisions; cross references.

SEC. 6038. *Cross references.* (1) For the notice required of persons acting in a fiduciary capacity for taxpayers or for transferees, see sections 6212, 6901(g), and 6903.

(2) For application by executor for determination of tax and discharge from personal liability therefor, see section 2204.

(3) For the notice required of taxpayers for redetermination of taxes claimed as credits, see sections 905(c) and 2016.

(4) For exemption certificates required to be furnished to employers by employees, see section 3402(f) (2), (3), (4), and (5).

(5) For receipts, constituting information returns, required to be furnished to employees, see section 6051.

(6) For the requirement to print the price of an admission on a ticket, see section 4234.

(7) For information required with respect to the redemption of stamps, see section 6805.

(8) For the statement required to be filed by a corporation expecting a net operating loss carryback or unused excess profits credit carryback, see section 6164.

(9) For the application, which a taxpayer may file for a tentative carryback adjustment of income taxes, see section 6411.

[Sec. 6037 as renumbered sec. 6038 by sec. 64 (c), Technical Amendments Act 1958 (72 Stat. 1656)]

Information Concerning Transactions With Other Persons

§ 301.6041 Statutory provisions; information at source.

SEC. 6041. *Information at source*—(a) *Payments of $600 or more.* All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments described in section 6042(1) or section 6045), of $600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary or his delegate, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary or his delegate, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

(b) *Collection of foreign items.* In the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by any person undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange, such person shall make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the amount paid and the name and address of the recipient of each such payment.

(c) *Payments of interest by corporations.* Every corporation making payments of interest, regardless of amounts, shall, when required by regulations of the Secretary or his delegate, make a return according to the forms or regulations prescribed by the Secretary or his delegate, setting forth the amount paid and the name and address of the recipient of each such payment.

(d) *Recipient to furnish name and address.* When necessary to make effective the provisions of this section, the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

§ 301.6041–1 Returns of information regarding certain payments.

For provisions relating to the requirement of returns of information regarding certain payments, see §§ 1.6041–1 to 1.6041–6, inclusive, of this chapter (Income Tax Regulations).

§ 301.6042 Statutory provisions; returns regarding corporate dividends, earnings, and profits.

SEC. 6042. *Returns regarding corporate dividends, earnings, and profits.* Every corporation shall, when required by the Secretary or his delegate—

(1) Make a return of its payments of dividends, stating the name and address of, the number of shares owned by, and the amount of dividends paid to, each shareholder;

(2) Furnish to the Secretary or his delegate a statement of such facts as will enable him to determine the portion of the earnings or profits of the corporation (including gains, profits, and income not taxed) accumulated during such periods as the Secretary or his delegate may specify, which have been distributed or ordered to be distributed, respectively, to its shareholders during such taxable years as the Secretary or his delegate may specify; and

(3) Furnish to the Secretary or his delegate a statement of its accumulated earnings and profits and the names and addresses of the individuals or shareholders who would be entitled to such accumulated earnings and profits if divided or distributed, and of the amounts that would be payable to each.

§ 301.6042–1 Returns of information regarding corporate dividends, earnings, and profits.

For provisions relating to the requirement of returns of information regarding corporate dividends, earnings, and profits, see § 1.6042–1 of this chapter (Income Tax Regulations).

§ 301.6043 Statutory provisions; return regarding corporate dissolution or liquidation.

SEC. 6043. *Return regarding corporate dissolution or liquidation.* Every corporation shall—

(1) Within 30 days after the adoption by the corporation of a resolution or plan for the dissolution of the corporation or for the liquidation of the whole or any part of its capital stock, make a return setting forth the terms of such resolution or plan and such other information as the Secretary or his delegate shall by forms or regulations prescribe; and

(2) When required by the Secretary or his delegate, make a return regarding its distributions in liquidation, stating the name and address of, the number and class of shares owned by, and the amount paid to, each shareholder, or, if the distribution is in property other than money, the fair market value (as of the date the distribution is made) of the property distributed to each shareholder.

§ 301.6043–1 Returns of information regarding corporate dissolutions or liquidations.

For provisions relating to the requirement of returns of information regarding corporate dissolutions or liquidations, see §§ 1.6043–1 and 1.6043–2 of this chapter (Income Tax Regulations).

§ 301.6044 Statutory provisions; returns regarding patronage dividends.

SEC. 6044. *Returns regarding patronage dividends*—(a) *Payments of $100 or more.* Any corporation allocating amounts as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, certificates of indebtedness, letters of advice, or in some other manner that discloses to each patron the amount of such dividend, refund, or rebate) shall make a return showing—

(1) The name and address of each patron to whom it has made such allocations amounting to $100 or more during the calendar year; and

(2) The amount of such allocations to each patron.

(b) *Payments regardless of amount.* If required by the Secretary or his delegate, any such corporation shall make a return of all patronage dividends, rebates, or refunds made during the calendar year to its patrons.

(c) *Exceptions.* This section shall not apply in the case of any corporation (including any cooperative or nonprofit corporation engaged in rural electrification) described in section 501(c) (12) or (15) which is exempt from tax under section 501(a), or in the case of any corporation subject to a tax imposed by subchapter L of chapter 1.

§ 301.6044–1 Returns of information regarding patronage dividends.

For provisions relating to the requirement of returns regarding patronage dividends, rebates, or refunds, see § 1.6044–1 of this chapter (Income Tax Regulations).

§ 301.6045 Statutory provisions; returns of brokers.

SEC. 6045. *Returns of brokers.* Every person doing business as a broker shall, when required by the Secretary or his delegate, make a return, in accordance with such regulations as the Secretary or his delegate may prescribe, showing the names of customers for whom such person has transacted any business, with such details regarding the profits and losses and such other information as the Secretary or his delegate may by forms or regulations require with respect to each customer as will enable the Secretary or his delegate to determine the amount of such profits or losses.

§ 301.6046 Statutory provisions; returns as to formation or reorganization of foreign corporations.

SEC. 6046. *Returns as to formation or reorganization of foreign corporations*—(a) *Requirement.* Every attorney, accountant, fiduciary, bank, trust company, financial institution, or other person, who aids, assists, counsels, or advises in, or with respect to, the formation, organization, or reorganization of any foreign corporation, shall, within 30 days thereafter, make a return

in accordance with regulations prescribed by the Secretary or his delegate.

(b) *Form and contents of return.* Such return shall be in such form, and shall set forth, in respect of each such corporation, to the full extent of the information within the possession or knowledge or under the control of the person required to make the return, such information as the Secretary or his delegate prescribes by forms or regulations as necessary for carrying out the provisions of the income tax laws.

(c) *Privileged communications.* Nothing in this section shall be construed to require the making of a return by an attorney-at-law with respect to any advice given or information obtained through the relationship of attorney and client.

(d) *Cross reference.* For provisions relating to penalties for violations of this section, see section 7203.

§ 301.6046–1 Returns of information regarding formation or reorganization of foreign corporations.

For provisions relating to requirement of returns of information regarding formation or reorganization of foreign corporations, see § 1.6046–1 of this chapter (Income Tax Regulations).

Information Regarding Wages Paid Employees

§ 301.6051 Statutory provisions; receipts for employees.

SEC. 6051. *Receipts for employees*—(a) *Requirement.* Every person required to deduct and withhold from an employee a tax under section 3101 or 3402, or who would have been required to deduct and withhold a tax under section 3402 if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement showing the following:

(1) The name of such person,

(2) The name of the employee (and his social security account number if wages as defined in section 3121(a) have been paid),

(3) The total amount of wages as defined in section 3401(a),

(4) The total amount deducted and withheld as tax under section 3402,

(5) The total amount of wages as defined in section 3121(a), and

(6) The total amount deducted and withheld as tax under section 3101.

In the case of compensation paid for service as a member of a uniformed service, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(2).

(b) *Special rule as to compensation of members of Armed Forces.* In the case of compensation paid for service as a member of the Armed Forces, the statement required by subsection (a) shall be furnished if any tax was withheld during the calendar year under section 3402, or if any of the compensation paid during such year is includible in gross income under chapter 1, or if during the calendar year any amount was required to be withheld as tax under section 3101. In lieu of the amount required to be shown by paragraph (3) of subsection (a), such statement shall show as wages paid during the calendar year the amount of such compensation paid during the calendar year which is not excluded from gross income under chapter 1 (whether or not such compensation constituted wages as defined in section 3401(a)).

(c) *Additional requirements.* The statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary or his delegate may by regulations prescribe.

(d) *Statements to constitute information returns.* A duplicate of any statement made pursuant to this section and in accordance with regulations prescribed by the Secretary or his delegate shall, when required by such regulations, be filed with the Secretary or his delegate.

[Sec. 6051 as amended by sec. 412, Servicemen's and Veterans' Survivor Benefits Act (70 Stat. 879)]

§ 301.6051–1 Receipts for employees.

For provisions relating to statements for employees regarding remuneration paid during calendar year, see § 31.6051–1 of this chapter (Employment Tax Regulations).

SIGNING AND VERIFYING OF RETURNS AND OTHER DOCUMENTS

§ 301.6061 Statutory provisions; signing of returns and other documents.

SEC. 6061. *Signing of returns and other documents.* Except as otherwise provided by sections 6062 and 6063, any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary or his delegate.

§ 301.6061–1 Signing of returns and other documents.

For provisions concerning the signing of returns and other documents, see the regulations relating to the particular tax.

§ 301.6062 Statutory provisions; signing of corporation returns.

SEC. 6062. *Signing of corporation returns.* The return of a corporation with respect to income shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary pursuant to the provisions of section 6012(b)(3), such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

§ 301.6062–1 Signing of corporation returns.

For provisions relating to the signing of corporation income tax returns, see § 1.6062–1 of this chapter (Income Tax Regulations).

§ 301.6063 Statutory provisions; signing of partnership returns.

SEC. 6063. *Signing of partnership returns.* The return of a partnership made under section 6031 shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

§ 301.6063–1 Signing of partnership returns.

For provisions relating to the signing of returns of partnership income, see § 1.6063–1 of this chapter (Income Tax Regulations).

§ 301.6064 Statutory provisions; signature presumed authentic.

SEC. 6064. *Signature presumed authentic.* The fact that an individual's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.

§ 301.6064–1 Signature presumed authentic.

An individual's name signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.

§ 301.6065 Statutory provisions; verification of returns.

SEC. 6065. *Verification of returns*—(a). *Penalties of perjury.* Except as otherwise provided by the Secretary or his delegate, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(b) *Oath.* The Secretary or his delegate may by regulations require that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be verified by an oath. This subsection shall not apply to returns and declarations with respect to income taxes made by individuals.

§ 301.6065–1 Verification of returns.

For provisions concerning the verification of returns and other documents, see the regulations relating to the particular tax.

TIME FOR FILING RETURNS AND OTHER DOCUMENTS

§ 301.6071 Statutory provisions; time for filing returns and other documents.

SEC. 6071. *Time for filing returns and other documents*—(a) *General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

(b) *Special taxes.* For payment of special taxes before engaging in certain trades and businesses, see section 4901 and section 5142.

[Sec. 6071 as amended by sec. 204(1) Excise Tax Technical Changes Act 1958 (72 Stat. 1428)]

§ 301.6071–1 Time for filing returns and other documents.

For provisions concerning the time for filing returns and other documents, see the regulations relating to the particular tax.

§ 301.6072 Statutory provisions; time for filing income tax returns.

SEC. 6072. *Time for filing income tax returns*—(a) *General rule.* In the case of returns under section 6012, 6013, 6017, or 6031 (relating to income tax under subtitle A), returns made on the basis of the calendar year shall be filed on or before the 15th day of April following the close of the calendar year and returns made on the basis of a fiscal year shall be filed on or before the 15th day of the fourth month following the close of the fiscal year, except as otherwise provided in the following subsections of this section.

(b) *Returns of corporations.* Returns of corporations under section 6012 made on the basis of the calendar year shall be filed on or before the 15th day of March following the close of the calendar year, and such returns made on the basis of a fiscal year

shall be filed on or before the 15th day of the third month following the close of the fiscal year.

(c) *Returns by certain nonresident alien individuals and foreign corporations.* Returns made by nonresident alien individuals (other than those whose wages are subject to withholding under chapter 24) and foreign corporations (other than those having an office or place of business in the United States) under section 6012 on the basis of a calendar year shall be filed on or before the 15th day of June following the close of the calendar year and such returns made on the basis of a fiscal year shall be filed on or before the 15th day of the 6th month following the close of the fiscal year.

(d) *Returns of exempt cooperative associations.* In the case of income tax returns of exempt cooperative associations taxable under the provisions of section 522, returns made on the basis of a calendar year shall be filed on or before the 15th day of September following the close of the calendar year and returns made on the basis of a fiscal year shall be filed on or before the 15th day of the 9th month following the close of the fiscal year.

(e) *Income tax due dates postponed in case of China Trade Act corporations.* In the case of any taxable year beginning after December 31, 1948, and ending before October 1, 1956, no Federal income tax return of any corporation organized under the China Trade Act, 1922 (42 Stat. 849, U.S.C., title 15, chapter 4), as amended, shall become due until December 31, 1956, but only with respect to any such corporation and any such taxable year which the Secretary or his delegate may determine reasonable under the circumstances in China pursuant to such regulations as may be prescribed. Such due date shall be subject to the power of the Secretary or his delegate to extend the time for filing such return, as in other cases.

§ 301.6072–1 Time for filing income tax returns.

For provisions relating to time for filing income tax returns, see §§ 1.6072–1 to 1.6072–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6073 Statutory provisions; time for filing declarations of estimated income tax by individuals.

SEC. 6073. *Time for filing declarations of estimated income tax by individuals*—(a) *Individuals other than farmers.* Declarations of estimated tax required by section 6015 from individuals not regarded as farmers for the purpose of that section shall be filed on or before April 15 of the taxable year, except that if the requirements of section 6015 are first met—

(1) After April 1 and before June 2 of the taxable year, the declaration shall be filed on or before June 15 of the taxable year, or

(2) After June 1 and before September 2 of the taxable year, the declaration shall be filed on or before September 15 of the taxable year, or

(3) After September 1 of the taxable year, the declaration shall be filed on or before January 15 of the succeeding taxable year.

(b) *Farmers.* Declarations of estimated tax required by section 6015 from individuals whose estimated gross income from farming (including oyster farming) for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year may, in lieu of the time prescribed in subsection (a), be filed at any time on or before January 15 of the succeeding taxable year.

(c) *Amendment.* An amendment of a declaration may be filed in any interval between installment dates prescribed for that taxable year, but only one amendment may be filed in each such interval.

(d) *Short taxable years.* The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

(e) *Fiscal years.* In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

§ 301.6073–1 Time for filing declarations of estimated income tax by individuals.

For provisions relating to time for filing declarations of estimated income tax by individuals, see §§ 1.6073–1 to 1.6073–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6074 Statutory provisions; time for filing declarations of estimated income tax by corporations.

SEC. 6074. *Time for filing declarations of estimated income tax by corporations*—(a) *General rule.* The declaration of estimated tax required of corporations by section 6016 shall be filed on or before the 15th day of the 9th month of the taxable year, except that if the requirements of section 6016 are first met after the last day of the 8th month and before the 1st day of the 12th month of the taxable year, the declaration shall be filed on or before the 15th day of the 12th month of the taxable year.

(b) *Amendment.* If a declaration is filed before the 15th day of the 12th month of the taxable year, an amendment of such declaration may be filed on or before such day.

(c) *Short taxable year.* The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

§ 301.6074–1 Time for filing declarations of estimated income tax by corporations.

For provisions relating to time for filing declarations of estimated income tax by corporations, see §§ 1.6074–1 to 1.6074–3, inclusive, of this chapter (Income Tax Regulations).

§ 301.6075 Statutory provisions; time for filing estate and gift tax returns.

SEC. 6075. *Time for filing estate and gift tax returns*—(a) *Estate tax returns.* Returns made under section 6018(a) (relating to estate taxes) shall be filed within 15 months after the date of the decedent's death.

(b) *Gift tax returns.* Returns made under section 6019 (relating to gift taxes) shall be filed on or before the 15th day of April following the close of the calendar year.

§ 301.6075–1 Time for filing estate and gift tax returns.

For provisions relating to time for filing estate tax returns and gift tax returns, see § 20.6075–1 of this chapter (Estate Tax Regulations) and § 25.6075–1 of this chapter (Gift Tax Regulations), respectively.

EXTENSION OF TIME FOR FILING RETURNS

§ 301.6081 Statutory provisions; extension of time for filing returns.

SEC. 6081. *Extension of time for filing returns*—(a) *General rule.* The Secretary or his delegate may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

(b) *Automatic extension for corporation income tax returns.* An extension of 3 months for the filing of the return of income taxes imposed by subtitle A shall be allowed any corporation if, in such manner and at such time as the Secretary or his delegate may by regulations prescribe, there is filed on behalf of such corporation the form prescribed by the Secretary or his delegate, and if such corporation pays, on or before the date prescribed for payment of the tax, the amount properly estimated as its tax or the first installment thereof required under section 6152; but this extension may be terminated at any time by the Secretary or his delegate by mailing to the taxpayer notice of such termination at least 10 days prior to the date for termination fixed in such notice.

(c) *Postponement by reason of war.* For time for performing certain acts postponed by reason of war, see section 7508.

§ 301.6081–1 Extension of time for filing returns.

For provisions concerning extensions of time for filing returns or other documents, see the regulations relating to the particular tax.

PLACE FOR FILING RETURNS OR OTHER DOCUMENTS

§ 301.6091 Statutory provisions; place for filing returns or other documents.

SEC. 6091. *Place for filing returns or other documents*—(a) *General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) *Tax returns.* In the case of returns of tax required under authority of part II of this subchapter—

(1) *Individuals.* Returns (other than corporation returns) shall be made to the Secretary or his delegate in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

(2) *Corporations.* Returns of corporations shall be made to the Secretary or his delegate in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

(3) *Estate tax returns.* Returns of estate tax required under section 6018 shall be made to the Secretary or his delegate in the internal revenue district in which was the domicile of the decedent at the time of his death or, if there was no such domicile in an internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

(4) *Exceptional cases.* Notwithstanding paragraph (1), (2), or (3) of this subsection, the Secretary or his delegate may permit a return to be filed in any internal revenue district, and may require the return of any officer or employee of the Treasury Department to be filed in any internal revenue district selected by the Secretary or his delegate.

§ 301.6091–1 Place for filing returns or other documents.

For provisions concerning the place for filing returns and other documents, see the regulations relating to the particular tax.

MISCELLANEOUS PROVISIONS

§ 301.6101 Statutory provisions; period covered by returns or other documents.

SEC. 6101. *Period covered by returns or other documents.* When not otherwise provided for by this title, the Secretary or his delegate may by regulations prescribe the period for which, or the date as of which, any return, statement, or other document required by this title or by regulations, shall be made.

§ 301.6101–1 Period covered by returns or other documents.

For provisions concerning the period covered by returns or other documents, see the regulations relating to the particular tax.

§ 301.6102 Statutory provisions; computations on returns or other documents.

SEC. 6102. *Computations on returns or other documents*—(a) *Amounts shown on internal revenue forms.* The Secretary or his delegate is authorized to provide with respect to any amount required to be shown on a form prescribed for any internal revenue return, statement, or other document, that if such amount of such item is other than a whole-dollar amount, either—

(1) The fractional part of a dollar shall be disregarded; or

(2) The fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by $1.

(b) *Election not to use whole dollar amounts.* Any person making a return, statement, or other document shall be allowed, under regulations prescribed by the Secretary or his delegate, to make such return, statement, or other document without regard to subsection (a).

(c) *Inapplicability to computation of amount.* The provisions of subsections (a) and (b) shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on a form, but shall be applicable only to such final amount.

§ 301.6102–1 Computations on returns or other documents.

(a) *Amounts shown on forms.* To the extent permitted by any internal revenue form or instructions prescribed for use with respect to any internal revenue return, declaration, statement, other document, or supporting schedules, any amount required to be reported on such form shall be entered at the nearest whole dollar amount. The extent to which, and the conditions under which, such whole dollar amounts shall be entered on any form will be set forth in the instructions issued with respect to such form. For the purpose of the computation to the nearest dollar, a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by $1. The following illustrates the application of this paragraph:

Exact amount:	*To be reported as*—
$18.49	$18
18.50	19
18.51	19

(b) *Election not to use whole dollar amounts*—(1) *Method of election.* Where any internal revenue form, or the instructions issued with respect to such form, provide that whole dollar amounts shall be reported, any person making a return, declaration, statement, or other document on such form may elect not to use whole dollar amounts by reporting thereon all amounts in full, including cents.

(2) *Time of election.* The election not to use whole dollar amounts must be made at the time of filing the return, declaration, statement, or other document. Such election may not be revoked after the time prescribed for filing such return, declaration, statement, or other document, including extensions of time granted for such filing. Such election may be made on any return, declaration, statement, or other document which is filed after the time prescribed for filing (including extensions of time), and such an election is irrevocable.

(3) *Effect of election.* The taxpayer's election shall be binding only on the return, declaration, statement, or other document filed for a taxable year or period, and a new election may be made on the return, declaration, statement, or other document filed for a subsequent taxable year or period. An election by either a husband or a wife not to report whole dollar amounts on a separate income tax return shall be binding on any subsequent joint return filed under the provisions of section 6013 (b).

(4) *Fractional part of a cent.* For treatment of the fractional part of a cent in the payment of taxes, see section 6313 and § 301.6313–1.

(c) *Inapplicability to computation of amount.* The provisions of paragraph (a) of this section apply only to amounts required to be reported on a return, declaration, statement, or other document. They do not apply to items which must be taken into account in making the computations necessary to determine such amounts. For example, each item of receipt must be taken into account at its exact amount, including cents, in computing the amount of total receipts required to be reported on an income tax return or supporting schedule. It is the amount of total receipts, so computed, which is to be reported at the nearest whole dollar on the return or supporting schedule.

(d) *Effect on accounting method.* Section 6102 and this section have no effect on any authorized accounting method.

§ 301.6103(a) [Reserved]

§ 301.6103(a)–100 Inspection by Department of Health, Education, and Welfare of individual income tax returns.

Pursuant to the provisions of section 6103(a) and of the Executive order issued thereunder,[1] and in the interest of the internal management of the Government, any individual income tax return made in respect of a tax imposed under chapter 1 or chapter 2 of the Code shall be open to inspection by the Department of Health, Education, and Welfare as may be needed in its administration of the provisions of title II of the Social Security Act, as amended (42 U.S.C. ch. 7). Upon request, the inspection of an individual income tax return may be made by any officer or employee of the Department of Health, Education, and Welfare duly authorized by the Secretary of such Department to make such inspection. The request to inspect an income tax return or returns of a particular individual shall be made, in writing, by the Secretary or any duly authorized officer or employee of the Department of Health, Education, and Welfare to the Commissioner of Internal Revenue or to any officer or employee of the Internal Revenue Service designated by the Commissioner. The written request shall be in such form and manner as may be prescribed by the Commissioner of Internal Revenue. Upon receipt of such a request, any officer or employee of the Internal Revenue Service duly authorized by the Commissioner of Internal Revenue may make the individual income tax return or returns available for inspection by any duly authorized officer or employee of the Department of Health, Education, and Welfare or may furnish such Department with a copy of the return or with any data on such return. Any information thus obtained shall be held confidential, except to the extent necessary to effectuate the purposes for which the returns are open to inspection.

[1] See E. O. 10619; 3 CFR 1955 Supp.

§ 301.6103(a)–101 Inspection of returns by committees of Congress other than those enumerated in section 6103(d).

(a) Pursuant to the provisions of section 6103(a), any return with respect to income, estate, or gift tax imposed by the Code shall be open to inspection by any committee of the Congress, or any subcommittee of a committee of the Congress, specially authorized to inspect such returns by an Executive order issued under the aforementioned statutory provisions. Such inspection shall be subject to the conditions and restrictions imposed by the Executive order and the rules and regulations hereinafter prescribed.

(b) Only such of the aforementioned returns as are specified in a resolution adopted by the committee in accordance with the rules of the appropriate house of the Congress then applicable to the reporting of a measure or recommendation from such committee shall be open to inspection. Such resolution shall set forth the names and addresses of the taxpayers whose returns it is necessary to inspect and the taxable periods covered by the returns. The inspection of returns authorized in this section may be made by the committee of the Congress, or the subcommittee of a committee of the Congress, authorized as

provided in paragraph (a) of this section, acting directly as a committee or as a subcommittee, or by or through such examiners or agents as such committee or subcommittee may designate or appoint in its written request hereinafter mentioned. Upon written request by the chairman of such committee or of such subcommittee to the Secretary of the Treasury, giving the names and addresses of the taxpayers whose returns it is desired to inspect and the taxable periods covered by the returns and stating that the resolution hereinbefore mentioned with respect to the inspection of such returns has been duly adopted by such committee or by the committee under which such subcommittee functions, the Secretary or any officer or employee of the Department of the Treasury, with the approval of the Secretary, shall furnish such committee or subcommittee with any data relating to or contained in any such return or shall make such return available for inspection by such committee or subcommittee or by the examiners or agents designated or appointed by such committee or subcommittee. Such data shall be furnished, or such return shall be made available for inspection, in an office of the Internal Revenue Service. Any information thus obtained by such committee or subcommittee shall be held confidential: *Provided, however,* That any portion thereof relevant or pertinent to the purpose of the investigation may be submitted by the investigating committee to the appropriate house of the Congress.

(c) This section shall not be applicable to any committee authorized by section 6103 (d) to inspect returns.

§ 301.6103(a)–102 Inspection by Securities and Exchange Commission of transcript cards and corporate and individual income tax returns.

Pursuant to the provisions of section 6103(a) and of the Executive order issued thereunder,[1] and in the interest of internal management of the Government, corporate and individual income tax returns made for taxable years ending after December 31, 1956, and statistical transcript cards prepared by the Internal Revenue Service from income tax returns of corporations made for taxable years beginning after December 31, 1953, and ending after August 16, 1954, shall be open to inspection by the Securities and Exchange Commission as may be needed in gathering statistical information in carrying out its functions under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj), as amended, or in complying with directives or recommendations of the Bureau of the Budget pursuant to section 103 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 18b), relating to the development of programs for preparing statistical information by Executive agencies. Upon request, such inspection may be made by any officer or employee of the Securities and Exchange Commission duly authorized by the Chairman of such Commission to make it. Upon written notice by the Chairman of the Securities and Exchange Commission to the Secretary of the Treasury, stating the type of statistical transcript cards or income tax returns of which inspection is desired, the Secretary, or any officer or employee of the Treasury Department with the approval of the Secretary, may furnish the Securities and Exchange Commission with any data on such cards or returns or may make them available for inspection and the taking of such data as the Chairman of the Securities and Exchange Commission may designate. Such data shall be furnished, or such returns or cards shall be made available for inspection, in the Office of the Commissioner of Internal Revenue. Any information thus obtained shall be held confidential except to the extent that it shall be published or disclosed in statistical form, provided such publication shall not disclose, directly or indirectly, the name or address of any taxpayer.

§ 301.6103(b) [Reserved]

§ 301.6103(c) [Reserved]

§ 301.6103(d) [Reserved]

§ 301.6103(e) [Reserved]

§ 301.6103(f) [Reserved]

§ 301.6104 Statutory provisions; publicity of information required from certain exempt organizations and certain trusts.

SEC. 6104. *Publicity of information required from certain exempt organizations and certain trusts*—(a) *Inspection of applications for tax exemption*—(1) *Public inspection*—(A) *In general.* If an organization described in section 501 (c) or (d) is exempt from taxation under section 501 (a) for any taxable year, the application filed by the organization with respect to which the Secretary or his delegate made his determination that such organization was entitled to exemption under section 501 (a), together with any papers submitted in support of such application, shall be open to public inspection at the national office of the Internal Revenue Service. In the case of any application filed after the date of the enactment of this subparagraph, a copy of such application shall be open to public inspection at the appropriate field office of the Internal Revenue Service (determined under regulations prescribed by the Secretary or his delegate). Any inspection under this subparagraph may be made at such times, and in such manner, as the Secretary or his delegate shall by regulations prescribe. After the application of any organization has been opened to public inspection under this subparagraph, the Secretary or his delegate shall, on the request of any person with respect to such organization, furnish a statement indicating the subsection and paragraph of section 501 which it has been determined describes such organization.

(B) *Withholding of certain information.* Upon request of the organization submitting any supporting papers described in subparagraph (A), the Secretary or his delegate shall withhold from public inspection any information contained therein which he determines relates to any trade secret, patent, process, style of work, or apparatus, of the organization, if he determines that public disclosure of such information would adversely affect the organization. The Secretary or his delegate shall withhold from public inspection any information contained in supporting papers described in subparagraph (A) the public disclosure of which he determines would adversely affect the national defense.

(2) *Inspection by committees of Congress.* Section 6103 (d) shall apply with respect to—

(A) The application for exemption of any organization described in section 501 (c) or (d) which is exempt from taxation under section 501 (a) for any taxable year, and

(B) Any other papers which are in the possession of the Secretary or his delegate and which relate to such application,

as if such papers constituted returns.

(b) *Inspection of annual information returns.* The information required to be furnished by sections 6033 (b) and 6034, together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary or his delegate may prescribe.

[Sec. 6104 as amended by sec. 75 (a), Technical Amendments Act 1958 (72 Stat. 1660)]

§ 301.6104–1 Public inspection of applications for tax exemption.

(a) *Applications open to inspection*—(1) *In general.* An application for exemption, together with any supporting documents, filed by an organization described in section 501 (c) or (d) (or in the corresponding provisions of any prior revenue law) shall be open to public inspection on or after November 3, 1958, in accordance with section 6104(a)(1) and the provisions of this section, if the Commissioner or district director has determined, on the basis of such application, that such organization is exempt from taxation for any taxable year under section 501(a) (or under the corresponding provisions of any prior revenue law). Certain applications for exemption have been destroyed pursuant to Congressional authorization and therefore will not be available for inspection.

(2) *Claim for exemption filed under section 503 or 504 and the regulations thereunder.* Claims for exemption filed to reestablish exempt status after denial thereof under the provisions of section 503 or 504 (or under the corresponding provisions of any prior revenue law), relating to denial of exemption because of certain prohibited transactions or an unreasonable accumulation of income, are considered to be applications for exemption for purposes of section 6104 (a) (1) and this section.

(3) *Requirement of exempt status.* An application for exemption and supporting documents shall not be available for public inspection before the organization filing such application has been determined, on the basis of such application, to be exempt from taxation for any taxable year. On the other hand, if the organization has been determined to be exempt for any taxable year, the application for exemption with respect to which such determination was made shall not be withheld from public inspection on the grounds that such organization is determined not to be entitled to exemption for any other taxable year or years.

(b) *Meaning of terms*—(1) *Application for exemption.* (i) For purposes of this section, the term "application for exemption" means the documents described in subdivision (ii) of this subparagraph which the organization was required to file when it applied for exemption.

[1] See Executive Order 10814 (3 CFR 1959 Supp.).

(ii) (*a*) With respect to an organization for which an application for exemption form is prescribed, the application for exemption includes such form and all documents and statements required to be filed by such form.

(*b*) With respect to an organization described in section 501 (c) or (d) for which no application for exemption form is prescribed, the application for exemption includes the application letter and a conformed copy of the articles of incorporation, declaration of trust, or other instrument of similar import, setting forth the permitted powers or activities of the organization, the by-laws or other code of regulations, and the latest financial statement showing the assets, liabilities, receipts, and disbursements of the organization, and statements showing the character of the organization, the purpose for which it was organized, its actual activities, sources of income and receipts and the disposition thereof, and whether or not any of its income or receipts is credited to surplus or may inure to the benefit of any private shareholder or individual.

(*c*) With respect to a mutual insurance company, the application for exemption shall, in addition to the statements and documents required to be submitted by the form, include copies of the policies or certificates of membership issued by such company.

(*d*) With respect to a title holding company described in section 501 (c) (2), if the organization for which title is held has not been specifically notified in writing by the Internal Revenue Service that it is held to be exempt under section 501 (a), the application for exemption shall, in addition to the statements and documents required to be submitted by the form, include the statements or documents which would be considered to be included in the application for exemption of the organization for which title is held.

(*e*) With respect to a State chartered credit union described in section 501 (c) (14), the application for exemption shall, in addition to the statements and documents indicated in (*b*) of this subdivision, include a statement indicating the State and date of incorporation and showing that the State credit union law with respect to loans, investments, and dividends, if any, is being complied with.

(*f*) With respect to an organization which is described in section 501(c)(3) and which files its application for exemption after July 26, 1959, the application for exemption shall, in addition to the statements and documents required to be submitted by the form, include a detailed statement of the proposed activities of such organization.

(iii) The term "application for exemption" does not include a request for a ruling as to whether a proposed transaction is a prohibited transaction under section 503 (or under the corresponding provisions of any prior revenue law).

(2) *Supporting document.* For purposes of this section, the term "supporting document" means any statement or document submitted by an organization in support of its application for exemption which is not specifically required by subdivision (ii) of subparagraph (1) of this paragraph. For example, a legal brief submitted in support of an application for exemption is a supporting document.

(c) *Withholding of certain information*—(1) *Trade secrets, patents, processes, styles of work, or apparatus*—(i) *In general.* Any information which is submitted by an organization whose application for exemption is open to inspection under this section and which is determined by the Commissioner to relate to any trade secret, patent, process, style of work, or apparatus of the organization submitting such information shall, upon request in writing of such organization, be withheld from public inspection under section 6104 (a) (1) and this section, if the Commissioner determines that the disclosure of such information would adversely affect the organization.

(ii) *Request for withholding of information.* Requests for the withholding of information from public inspection as provided in subdivision (i) of this subparagraph shall—

(*a*) In the case of applications for exemption filed before November 3, 1958, be made to the Commissioner of Internal Revenue, Attention: Public Information Division, Washington 25, D. C.; or

(*b*) In the case of applications for exemption filed on or after November 3, 1958, be filed with the office with which the taxpayer filed the documents in which the material to be withheld is contained.

The request shall clearly identify the material desired to be withheld (the document, page, paragraph, and line) and shall include the reasons for the organization's position that the information is of the type which may be withheld from public inspection.

(iii) *Determination.* An organization which has filed a request under the provisions of this subparagraph will be notified of the determination as to whether the information to which the request relates will be withheld from public inspection.

(2) *National defense material.* The Internal Revenue Service shall withhold from public inspection any information which is submitted by an organization whose application for exemption is open to inspection under this section the public disclosure of which the Commissioner determines would adversely affect the national defense.

(d) *Place of inspection.* Applications for exemption, together with any supporting documents, which are open to public inspection under section 6104 (a) (1) shall be available for inspection on or after November 3, 1958, in the Office of the Director, Public Information Division, Internal Revenue Service, Washington 25, D. C., regardless of when or where such applications were filed except for such applications as have been destroyed pursuant to Congressional authority. In addition, in the case of an application for exemption filed on or after September 3, 1958, a copy of such application (as defined in paragraph (b) (1) of this section), but not the supporting documents, shall also be available for public inspection on or after November 3, 1958, in the office of the district director with whom the application was required to be filed.

(e) *Procedure for public inspection of applications for exemption*—(1) *Request for inspection.* Applications for exemption and the supporting documents shall be available for public inspection only upon request. If inspection at the national office is desired, the request shall be made in writing to the Commissioner of Internal Revenue, Attention: Director, Public Information Division, Washington 25, D. C. Requests for inspection in the office of a district director shall be made in writing to the appropriate district director. All requests for inspection must include the name and address of the organization which filed the application for exemption the inspection of which is requested. In addition, if such organization has more than one application for exemption open to public inspection under the provisions of section 6104 (a) (1), only the most recent of such applications shall be made available for inspection unless the request for inspection specifically states otherwise.

(2) *Time and extent of inspection.* A person requesting public inspection in the manner specified in subparagraph (1) of this paragraph shall be notified by the Internal Revenue Service when the material he desires to inspect will be made available for his inspection. An application for exemption will be made available for public inspection at such reasonable and proper times as not to interfere with its use by the Internal Revenue Service or to exclude other persons from inspecting it. In addition, the Commissioner or district director may limit the number of applications for exemption to be made available to any person for inspection on a given date. The public inspection authorized by section 6104 (a) (1) will be allowed only in the presence of an internal revenue officer or employee and only during the regular hours of business of the Internal Revenue Service office.

(3) *Copying of documents.* Applications for exemption and supporting documents will be made available on an inspection basis only. Notes may be taken and copies may be made manually, but not photographically.

(f) *Statement of exempt status.* A statement setting forth the following information with respect to an organization shall be furnished to any person, upon request in writing, after the application for exemption of such organization is open to public inspection under section 6104 (a) (1):

(1) The subsection and paragraph of section 501 (or the corresponding provision of any prior revenue law) under which the organization has been determined, on the basis of such application, to qualify for exemption from taxation; and

(2) Whether the organization is currently held to be exempt.

Request for such information may be made in writing to the Commissioner of Internal Revenue, Attention: Public Information Division, Washington 25, D.C., or to the district director with whom the organization's application for exemption was required to be filed.

§ 301.6104–2 Publicity of information on certain information returns.

(a) *In general.* The following information, together with the name and address of the organization or trust furnishing such information, shall be a matter of public record:

(1) The information furnished, pursuant to section 6033 (b) (relating to annual information required from certain organizations described in section 501 (c) (3) which are exempt under section 501 (a)), on pages 3 and 4 of Form 990–A; and

(2) The information furnished, pursuant to section 6034 (relating to annual information required of trusts claiming a charitable deduction under section 642 (c)), on Form 1041–A.

Such information shall be available to any person during the regular hours of business in the office of the district director with whom the Form 990–A or 1041–A was required to be filed. Such information may be used by the Commissioner for the purpose of making and publishing statistical or other studies.

(b) *Copying of material available for inspection.* The information which is a matter of public record under section 6104 (b) will be made available on an inspection basis only. Notes may be taken and copies may be made manually, but not photographically.

§ 301.6105 [Reserved]

§ 301.6106 [Reserved]

§ 301.6107 [Reserved]

§ 301.6108 [Reserved]

§ 301.6109 [Reserved]

Time and Place for Paying Tax

PLACE AND DUE DATE FOR PAYMENT OF TAX

§ 301.6151 Statutory provisions; time and place for paying tax shown on returns.

SEC. 6151. *Time and place for paying tax shown on returns*—(a) *General rule.* Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the principal internal revenue officer for the internal revenue district in which the return is required to be filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) *Exceptions*—(1) *Income tax not computed by taxpayer.* If the taxpayer elects under section 6014 not to show the tax on the return, the amount determined by the Secretary or his delegate as payable shall be paid within 30 days after the mailing by the Secretary or his delegate to the taxpayer of a notice stating such amount and making demand therefor.

(2) *Use of Government depositaries.* For authority of the Secretary or his delegate to require payments to Government depositaries, see section 6302(c).

(c) *Date fixed for payment of tax.* In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

§ 301.6151–1 Time and place for paying tax shown on returns.

For provisions concerning the time and place for paying tax shown on returns with respect to a particular tax, see the regulations relating to such tax.

§ 301.6152 Statutory provisions; installment payments.

SEC. 6152. *Installment payments*—(a) *Privilege to elect to make installment payments*—(1) *Corporations.* A corporation subject to the taxes imposed by chapter 1 may elect to pay the unpaid amount of such taxes in installments as follows:

(A) With respect to taxable years ending before December 31, 1954, four installments, the first two of which shall be 45 percent, respectively, of such taxes and the last two of which shall be 5 percent, respectively, of such taxes;

(B) With respect to taxable years ending on or after December 31, 1954, two equal installments.

(2) *Estates of decedents.* A decedent's estate subject to the tax imposed by chapter 1 may elect to pay such tax in four equal installments.

(b) *Dates prescribed for payment of installments*—(1) *Four installments.* In any case (other than payment of estimated income tax) in which the tax may be paid in four installments, the first installment shall be paid on the date prescribed for the payment of the tax, the second installment shall be paid on or before 3 months, the third installment on or before 6 months, and the fourth installment on or before 9 months, after such date.

(2) *Two installments.* In any case (other than payment of estimated income tax) in which the tax may be paid in two installments, the first installment shall be paid on the date prescribed for the payment of the tax, and the second installment shall be paid on or before 3 months after such date.

(c) *Proration of deficiency to installments.* If an election has been made to pay the tax imposed by chapter 1 in installments and a deficiency has been assessed, the deficiency shall be prorated to such installments. Except as provided in section 6861 (relating to jeopardy assessments), that part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as and as part of such installment. That part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary or his delegate.

(d) *Acceleration of payment.* If any installment (other than an installment of estimated income tax) is not paid on or before the date fixed for its payment, the whole of the unpaid tax shall be paid upon notice and demand from the Secretary or his delegate.

[Sec. 6152 as amended by sec. 3, Act of Sept. 1, 1954 (Pub. Law 767, 83d Cong., 68 Stat. 1130)]

§ 301.6152–1 Installment payments.

For provisions relating to the installment payments of income taxes, see § 1.6152–1 of this chapter (Income Tax Regulations).

§ 301.6153 Statutory provisions; installment payments of estimated income tax by individuals.

SEC. 6153. *Installment payments of estimated income tax by individuals*—(a) *General rule.* The amount of estimated tax (as defined in section 6015(c)) with respect to which a declaration is required under section 6015 shall be paid as follows:

(1) If the declaration is filed on or before April 15 of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the filing of the declaration, the second and third on June 15 and September 15, respectively, of the taxable year, and the fourth on January 15 of the succeeding taxable year.

(2) If the declaration is filed after April 15 and not after June 15 of the taxable year, and is not required by section 6073(a) to be filed on or before April 15 of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid at the time of the filing of the declaration, the second on September 15 of the taxable year, and the third on January 15 of the succeeding taxable year.

(3) If the declaration is filed after June 15 and not after September 15 of the taxable year, and is not required by section 6073(a) to be filed on or before June 15 of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid at the time of the filing of the declaration, and the second on January 15 of the succeeding taxable year.

(4) If the declaration is filed after September 15 of the taxable year, and is not required by section 6073(a) to be filed on or before September 15 of the taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(5) If the declaration is filed after the time prescribed in section 6073(a) (including cases in which an extension of time for filing the declaration has been granted under section 6081), paragraphs (2), (3), and (4) of this subsection shall not apply, and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in section 6073(a), and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been so filed.

(b) *Farmers.* If an individual referred to in section 6073(b) (relating to income from farming) makes a declaration of estimated tax after September 15 of the taxable year and on or before January 15 of the succeeding taxable year, the estimated tax shall be paid in full at the time of the filing of the declaration.

(c) *Amendments of declaration.* If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease, as the case may be, in the estimated tax by reason of such amendment, and if any amendment is made after September 15 of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(d) *Application to short taxable years.* The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

(e) *Fiscal years.* In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

(f) *Installments paid in advance.* At the election of the individual, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

§ 301.6153–1 Installment payments of estimated income tax by individuals.

For provisions relating to installment payments of estimated income tax by individuals, see §§ 1.6153–1 to 1.6153–4,

inclusive, of this chapter (Income Tax Regulations).

§ 301.6154 Statutory provisions; installment payments of estimated income tax by corporations.

SEC. 6154. *Installment payments of estimated income tax by corporations*—(a) *Amount of estimated income tax required to be paid.* The amount of estimated tax (as defined in section 6016(b)) with respect to which a declaration is required under section 6016 shall be paid as follows:

If the taxable year ends—	The amount required to be paid shall be the following percentage of the estimated tax:
On or after December 31, 1955 and before December 31, 1956	10
On or after December 31, 1956 and before December 31, 1957	20
On or after December 31, 1957 and before December 31, 1958	30
On or after December 31, 1958 and before December 31, 1959	40
On or after December 31, 1959	50

(b) *Time for payment of installment.* If the declaration is filed on or before the 15th day of the 9th month of the taxable year, the amount determined under subsection (a) shall be paid in two equal installments. The first installment shall be paid on or before the 15th day of the 9th month of the taxable year, and the second installment shall be paid on or before the 15th day of the 12th month of the taxable year. If the declaration is filed after the 15th day of the 9th month of the taxable year, the amount determined under subsection (a) shall be paid in full on or before the 15th day of the 12th month of the taxable year.

(c) *Amendment of declaration.* If any amendment of a declaration is filed, installments payable on the 15th day of the 12th month, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease, as the case may be, in the estimated tax by reason of such amendment.

(d) *Application to short taxable year.* The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

(e) *Installments paid in advance.* At the election of the corporation, any installment of the estimated tax may be paid prior to the date prescribed for its payment.

§ 301.6154–1 Installment payments of estimated income tax by corporations.

For provisions relating to installment payments of estimated income tax by corporations, see §§ 1.6154–1 to 1.6154–3, inclusive, of this chapter (Income Tax Regulations).

§ 301.6155 Statutory provisions; payment on notice and demand.

SEC. 6155. *Payment on notice and demand*—(a) *General rule.* Upon receipt of notice and demand from the Secretary or his delegate, there shall be paid at the place and time stated in such notice the amount of any tax (including any interest, additional amounts, additions to tax, and assessable penalties) stated in such notice and demand.

(b) *Cross references.* (1) For restrictions on assessment and collection of deficiency assessments of taxes subject to the jurisdiction of the Tax Court, see sections 6212 and 6213.

(2) For provisions relating to assessment of claims allowed in a bankruptcy or receivership proceeding, see section 6873.

(3) For provisions relating to jeopardy assessments, see subchapter A of Chapter 70.

§ 301.6155–1 Payment on notice and demand.

Upon receipt of notice and demand from the district director (including the Director of International Operations), there shall be paid at the place and time stated in such notice the amount of any tax (including any interest, additional amounts, additions to the tax, and assessable penalties) stated in such notice and demand.

§ 301.6156 Statutory provisions; payment of taxes under provisions of the Tariff Act.

SEC. 6156. *Payment of taxes under provisions of the Tariff Act.* For collection under the provisions of the Tariff Act of 1930 of the taxes imposed by section 4501(b), and subchapters A, B, C, D, and E of chapter 38, see sections 4504 and 4601, respectively.

EXTENSIONS OF TIME FOR PAYMENT

§ 301.6161 Statutory provisions; extension of time for paying tax.

SEC. 6161. *Extension of time for paying tax*—(a) *Amount determined by taxpayer on return*—(1) *General rule.* The Secretary or his delegate, except as otherwise provided in this title, may extend the time for payment of the amount of the tax shown, or required to be shown, on any return or declaration required under authority of this title (or any installment thereof), for a reasonable period not to exceed 6 months from the date fixed for payment thereof. Such extension may exceed 6 months in the case of a taxpayer who is abroad.

(2) *Estate tax.* If the Secretary or his delegate finds—

(A) That the payment, on the due date, of any part of the amount determined by the executor as the tax imposed by chapter 11,

(B) That the payment, on the date fixed for the payment of any installment under section 6166, of any part of such installment (including any part of a deficiency prorated to an installment the date for payment of which had not arrived), or

(C) That the payment upon notice and demand of any part of a deficiency prorated under the provisions of section 6166 to installments the date for payment of which had arrived,

would result in undue hardship to the estate, he may extend the time for payment for a reasonable period not in excess of 10 years from the date prescribed by section 6151(a) for payment of the tax.

(b) *Amount determined as deficiency.* Under regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may extend, to the extent provided below, the time for payment of the amount determined as a deficiency:

(1) In the case of a tax imposed by chapter 1 or 12, for a period not to exceed 18 months from the date fixed for payment of the deficiency, and, in exceptional cases, for a further period not to exceed 12 months;

(2) In the case of a tax imposed by chapter 11, for a period not to exceed 4 years from the date otherwise fixed for payment of the deficiency.

An extension under this subsection may be granted only where it is shown to the satisfaction of the Secretary or his delegate that the payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer in the case of a tax imposed by chapter 1, to the estate in the case of a tax imposed by chapter 11, or to the donor in the case of a tax imposed by chapter 12. No extension shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(c) *Claims in bankruptcy or receivership proceedings.* Extensions of time for payment of any portion of a claim for tax under chapter 1 or chapter 12, allowed in bankruptcy or receivership proceedings, which is unpaid, may be had in the same manner and subject to the same provisions and limitations as provided in subsection (b) in respect of a deficiency in such tax.

(d) *Cross references*—(1) *Period of limitation.* For extension of the period of limitation in case of an extension under subsection (a)(2) or subsection (b)(2), see section 6503(d).

(2) *Security.* For authority of the Secretary or his delegate to require security in case of an extension under subsection (a)(2) or subsection (b), see section 6165.

[Sec. 6161 as amended by sec. 206(c), Technical Amendments Act 1958 (72 Stat. 1684)]

§ 301.6161–1 Extension of time for paying tax.

For provisions concerning the extension of time for paying a particular tax or for paying an amount determined as a deficiency, see the regulations relating to such tax.

§ 301.6162 Statutory provisions; extension of time for payment of tax on gain attributable to liquidation of personal holding companies.

SEC. 6162. *Extension of time for payment of tax on gain attributable to liquidation of personal holding companies*—(a) *Extension permitted.* The Secretary or his delegate may (under regulations prescribed by the Secretary or his delegate) extend (for a period not to exceed 5 years from the date fixed for the payment of the tax) the time for the payment of such portion of the amount determined as the tax under chapter 1 by the taxpayer for any taxable year beginning before January 1, 1956, as is attributable to the short-term or long-term capital gain derived by the taxpayer from the receipt by him of property other than money on a complete liquidation of a corporation to which section 331(a)(1) or 342 applies. This section shall apply only if the corporation, for its taxable year preceding the year in which occurred the complete liquidation (or the first of the series of distributions in complete liquidation), was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company. An extension under this section shall be granted only if it is shown to the satisfaction of the Secretary or his delegate that the failure to grant the extension will result in undue hardship to the taxpayer.

(b) *Security.* For authority of the Secretary or his delegate to require security in the case of such an extension, see section 6165.

§ 301.6162–1 Extension of time for payment of tax on gain attributable to liquidation of personal holding companies.

For provisions relating to the extension of time for payment of tax on gain attributable to liquidation of personal holding companies, see § 1.6162–1 of this chapter (Income Tax Regulations).

§ 301.6163 Statutory provisions; extension of time for payment of estate tax on value of reversionary or remainder interest in property.

SEC. 6163. *Extension of time for payment of estate tax on value of reversionary or remainder interest in property*—(a) *Extension permitted.* If the value of a reversionary or remainder interest in property is included under chapter 11 in the value of the gross estate, the payment of the part of the tax under chapter 11 attributable to such interest may, at the election of the executor, be postponed until 6 months after the termination of the precedent interest or interests in the property, under such regulations as the Secretary or his delegate may prescribe.

(b) *Extension to prevent undue hardship.* If the Secretary or his delegate finds that the payment of the tax at the expiration of the period of postponement provided for in subsection (a) would result in undue hardship to the estate, he may extend the time for payment for a reasonable period not in excess of 2 years from the expiration of such period of postponement.

(c) *Cross references*—(1) *Interest.* For provisions requiring the payment of interest for the period of such extension, see section 6601(b).

(2) *Security.* For authority of the Secretary or his delegate to require security in the case of such extension, see section 6165.

[Sec. 6163 as amended by sec. 66(b)(1), Technical Amendments Act 1958 (72 Stat. 1658).]

§ 301.6163–1 Extension of time for payment of estate tax on value of reversionary or remainder interest in property.

For provisions relating to the extension of time for payment of estate tax on value of reversionary or remainder interest in property, see § 20.6163–1 of this chapter (Estate Tax Regulations).

§ 301.6164 Statutory provisions; extension of time for payment of taxes by corporations expecting carrybacks.

SEC. 6164. *Extension of time for payment of taxes by corporations expecting carrybacks*—(a) *In general.* If a corporation, in any taxable year, files with the Secretary or his delegate a statement, as provided in subsection (b), with respect to an expected net operating loss carryback from such taxable year, the time for payment of all or part of any tax imposed by subtitle A for the taxable year immediately preceding such taxable year shall be extended, to the extent and subject to the conditions and limitations hereinafter provided in this section.

(b) *Contents of statement.* The statement shall be filed at such time and in such manner and form as the Secretary or his delegate may by regulations prescribe. Such statement shall set forth that the corporation expects to have a net operating loss carryback, as provided in section 172(b), from the taxable year in which such statement is made, and shall set forth, in such detail and with such supporting data and explanation as such regulations shall require—

(1) The estimated amount of the expected net operating loss;

(2) The reasons, facts, and circumstances which cause the corporation to expect such net operating loss;

(3) The amount of the reduction of the tax previously determined attributable to the expected carryback, such tax previously determined being ascertained in accordance with the method prescribed in section 1314(a); and such reduction being determined by applying the expected carryback in the manner provided by law to the items on the basis of which such tax was determined;

(4) The tax and the part thereof the time for payment of which is to be extended; and

(5) Such other information for purposes of carrying out the provisions of this section as may be required by such regulations.

The Secretary or his delegate shall, upon request, furnish a receipt for any statement filed, which shall set forth the date of such filing.

(c) *Amount to which extension relates and installment payments.* The amount the time for payment of which may be extended under subsection (a) with respect to any tax shall not exceed the amount of such tax shown on the return, increased by any amount assessed as a deficiency (or as interest or addition to the tax) prior to the date of filing the statement and decreased by any amount paid or required to be paid prior to the date of such filing, and the total amount of the tax the time for payment of which may be extended shall not exceed the amount stated under subsection (b)(3). For purposes of this subsection, an amount shall not be considered as required to be paid unless shown on the return or assessed as a deficiency (or as interest or addition to the tax), and an amount assessed as a deficiency (or as interest or addition to the tax) shall be considered to be required to be paid prior to the date of filing of the statement if the 10th day after notice and demand for its payment occurs prior to such date. If an extension of time under this section relates to only a part of the tax, the time for payment of the remainder shall be considered to be the dates on which payments would have been required if such remainder had been the tax and the taxpayer had elected to pay the tax in installments as provided in section 6152.

(d) *Period of extension.* The extension of time for payment provided in this section shall expire—

(1) On the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for the filing of the return for the taxable year of the expected net operating loss, or

(2) If an application for tentative carryback adjustment provided in section 6411 with respect to such loss is filed before the expiration of the period prescribed in paragraph (1), on the date on which notice is mailed by certified mail or registered mail by the Secretary or his delegate to the taxpayer that such application is allowed or disallowed in whole or in part.

(e) *Revised statements.* Each statement filed under subsection (a) with respect to any taxable year shall be in lieu of the last statement previously filed with respect to such year. If the amount the time for payment of which is extended under a statement filed is less than the amount under the last statement previously filed, the extension of time shall be terminated as to the difference between the two amounts.

(f) *Termination.* The Secretary or his delegate is not required to make any examination of the statement, but he may make such examination thereof as he deems necessary and practicable. The Secretary or his delegate shall terminate the extension as to any part of the amount to which it relates which he deems should be terminated because, upon such examination, he believes that, as of the time such examination is made, all or any part of the statement clearly is in a material respect erroneous or unreasonable.

(g) *Payments on termination.* If an extension of time is terminated under subsection (e) or (f) with respect to any amount, then—

(1) No further extension of time shall be made under this section with respect to such amount, and

(2) The time for payment of such amount shall be considered to be the dates on which payments would have been required if there had been no extension with respect to such amount and the taxpayer had elected to pay the tax in installments as provided in section 6152.

(h) *Jeopardy.* If the Secretary or his delegate believes that collection of the amount to which an extension under this section relates is in jeopardy, he shall immediately terminate such extension, and notice and demand shall be made by him for payment of such amount.

(i) *Consolidated returns.* If the corporation seeking an extension of time under this section made or was required to make a consolidated return, either for the taxable year within which the net operating loss arises or for the preceding taxable year affected by such loss, the provisions of such section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary or his delegate may by regulations prescribe.

[Sec. 6164 as amended by sec. 89(b), Technical Amendments Act 1958 (72 Stat. 1665).]

§ 301.6164–1 Extension of time for payment of taxes by corporations expecting carrybacks.

For provisions relating to the extension of time for payment of taxes by corporations expecting carrybacks, see §§ 1.6164–1 to 1.6164–9, inclusive, of this chapter (Income Tax Regulations).

§ 301.6165 Statutory provisions; bonds where time to pay tax or deficiency has been extended.

SEC. 6165. *Bonds where time to pay tax or deficiency has been extended.* In the event the Secretary or his delegate grants any extension of time within which to pay any tax or any deficiency therein, the Secretary or his delegate may require the taxpayer to furnish a bond in such amount (not exceeding double the amount with respect to which the extension is granted) conditioned upon the payment of the amount extended in accordance with the terms of such extension.

§ 301.6165–1 Bonds where time to pay the tax or deficiency has been extended.

For provisions concerning bonds where time to pay a tax or deficiency has been extended, see the regulations relating to the particular tax.

§ 301.6166 Statutory provisions; extension of time for payment of estate tax where estate consists largely of interest in closely held business.

SEC. 6166. *Extension of time for payment of estate tax where estate consists largely of interest in closely held business*—(a) *Extension permitted.* If the value of an interest in a closely held business which is included in determining the gross estate of a decedent who was (at the date of his death) a citizen or resident of the United States exceeds either—

(1) 35 percent of the value of the gross estate of such decedent, or

(2) 50 percent of the taxable estate of such decedent,

the executor may elect to pay part or all of the tax imposed by section 2001 in two or more (but not exceeding 10) equal installments. Any such election shall be made not later than the time prescribed by section 6075(a) for filing the return of such tax (including extensions thereof), and shall be made in such manner as the Secretary or his delegate shall by regulations prescribe. If an election under this section is made, the provisions of this subtitle shall apply as

though the Secretary or his delegate were extending the time for payment of the tax. For purposes of this section, value shall be value determined for Federal estate tax purposes.

(b) *Limitation.* The maximum amount of tax which may be paid in installments as provided in this section shall be an amount which bears the same ratio to the tax imposed by section 2001 (reduced by the credits against such tax) as the value of the interest in a closely held business which qualifies under subsection (a) bears to the value of the gross estate.

(c) *Closely held business.* For purposes of this section, the term "interest in a closely held business" means—

(1) An interest as a proprietor in a trade or business carried on as a proprietorship.

(2) An interest as a partner in a partnership carrying on a trade or business, if—

(A) 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, or

(B) Such partnership had 10 or less partners,

(3) Stock in a corporation carrying on a trade or business, if—

(A) 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or

(B) Such corporation had 10 or less shareholders.

For purposes of this subsection, determinations shall be made as of the time immediately before the decedent's death.

(d) *Special rule for interests in two or more closely held businesses.* For purposes of subsections (a), (b), and (h)(1), interests in two or more closely held businesses, with respect to each of which there is included in determining the value of the decedent's gross estate more than 50 percent of the total value of each such business, shall be treated as an interest in a single closely held business. For purposes of the 50 percent requirement of the preceding sentence, an interest in a closely held business which represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property shall be treated as having been included in determining the value of the decedent's gross estate.

(e) *Date for payment of installments.* If an election is made under subsection (a), the first installment shall be paid on or before the date prescribed by section 6151(a) for payment of the tax, and each succeeding installment shall be paid on or before the date which is one year after the date prescribed by this subsection for payment of the preceding installment.

(f) *Proration of deficiency to installments.* If an election is made under subsection (a) to pay any part of the tax imposed by section 2001 in installments and a deficiency has been assessed, the deficiency shall (subject to the limitation provided by subsection (b)) be prorated to such installments. The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary or his delegate. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(g) *Time for payment of interest.* If the time for payment of any amount of tax has been extended under this section, interest payable under section 6601 on any unpaid portion of such amount shall be paid annually at the same time as, and as a part of, each installment payment of the tax. Interest, on that part of a deficiency prorated under this section to any installment the date for payment of which has not arrived, for the period before the date fixed for the last installment preceding the assessment of the deficiency, shall be paid upon notice and demand from the Secretary or his delegate. In applying section 6601(b) (relating to the application of the 4-percent rate of interest in the case of certain extensions of time to pay estate tax) in the case of a deficiency, the entire amount which is prorated to installments under this section shall be treated as an amount of tax the payment of which is extended under this section.

(h) *Acceleration of payment—(1) Withdrawal of funds from business; disposition of interest.* (A) If—

(i) Aggregate withdrawals of money and other property from the trade or business, an interest in which qualifies under subsection (a), made with respect to such interest, equal or exceed 50 percent of the value of such trade or business, or

(ii) 50 percent or more in value of an interest in a closely held business which qualifies under subsection (a) is distributed, sold, exchanged, or otherwise disposed of,

then the extension of time for payment of tax provided in this section shall cease to apply, and any unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary or his delegate.

(B) In the case of a distribution in redemption of stock to which section 303 (or so much of section 304 as relates to section 303) applies—

(i) Subparagraph (A)(i) does not apply with respect to withdrawals of money and other property distributed; and for purposes of such subparagraph the value of the trade or business shall be considered to be such value reduced by the amount of money and other property distributed, and

(ii) Subparagraph (A)(ii) does not apply with respect to the stock redeemed; and for purposes of such subparagraph the interest in the closely held business shall be considered to be such interest reduced by the value of the stock redeemed.

This subparagraph shall apply only if, on or before the date prescribed by subsection (e) for payment of the first installment which becomes due after the date of the distribution, there is paid an amount of the tax imposed by section 2001 not less than the amount of money and other property distributed.

(C) Subparagraph (A)(ii) does not apply to an exchange of stock pursuant to a plan of reorganization described in subparagraph (D), (E), or (F) of section 368(a)(1) nor to an exchange to which section 355 (or so much of section 356 as relates to section 355) applies; but any stock received in such an exchange shall be treated for purposes of such subparagraph as an interest qualifying under subsection (a).

(D) Subparagraph (A)(ii) does not apply to a transfer of property of the decedent by the executor to a person entitled to receive such property under the decendent's will or under the applicable law of descent and distribution.

(2) *Undistributed income of estate.* (A) If an election is made under this section and the estate has undistributed net income for any taxable year after its fourth taxable year, the executor shall, on or before the date prescribed by law for filing the income tax return for such taxable year (including extensions thereof), pay an amount equal to such undistributed net income in liquidation of the unpaid portion of the tax payable in installments.

(B) For purposes of subparagraph (A), the undistributed net income of the estate for any taxable year is the amount by which the distributable net income of the estate for such taxable year (as defined in section 643) exceeds the sum of—

(i) The amounts for such taxable year specified in paragraphs (1) and (2) of section 661(a) (relating to deduction for distributions, etc.);

(ii) The amount of tax imposed for the taxable year on the estate under chapter 1; and

(iii) The amount of the Federal estate tax (including interest) paid by the executor during the taxable year (other than any amount paid pursuant to this paragraph).

(3) *Failure to pay installment.* If any installment under this section is not paid on or before the date fixed for its payment by this section (including any extension of time for the payment of such installment), the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary or his delegate.

(i) *Transitional rules—(1) In general.* If—

(A) A deficiency in the tax imposed by section 2001 is assessed after the date of the enactment of this section, and

(B) The estate qualifies under paragraph (1) or (2) of subsection (a),

the executor may elect to pay the deficiency in installments. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(2) *Time of election.* An election under this subsection shall be made not later than 60 days after issuance of notice and demand by the Secretary or his delegate for the payment of the deficiency, and shall be made in such manner as the Secretary or his delegate shall by regulations prescribe.

(3) *Effect of election on payment.* If an election is made under this subsection, the deficiency shall (subject to the limitation provided by subsection (b)) be prorated to the installments which would have been due if an election had been timely made under this section at the time the estate tax return was filed. The part of the deficiency so prorated to any installment the date for payment of which would have arrived shall be paid at the time of the making of the election under this subsection. The portion of the deficiency so prorated to installments the date for payment of which would not have so arrived shall be paid at the time such installments would have been due if such an election had been made.

(4) *Application of subsection (h)(2).* In the case of an election under this subsection, subsection (h)(2) shall not apply with respect to undistributed net income for any taxable year ending before January 1, 1960.

(j) *Regulations.* The Secretary or his delegate shall prescribe such regulations as may be necessary to the application of this section.

(k) *Cross references—(1) Interest.* For provisions requiring the payment of interest at the rate of 4 percent per annum for the period of an extension, see section 6601(b).

(2) *Security.* For authority of the Secretary or his delegate to require security in the case of an extension under this section, see section 6165.

(3) *Period of limitation.* For extension of the period of limitation in the case of an extension under this section, see section 6503(d).

[Sec. 6166 as added by sec. 206(a), Technical Amendments Act 1958 (72 Stat. 1681)]

§ 301.6166–1 Extension of time for payment of estate tax where estate consists largely of interest in closely held business.

For provisions relating to the extension of time for payment of estate tax

where estate consists largely of interest in closely held business, see §§ 20.6166–1 to 20.6166–4, inclusive, of this chapter[1] (Estate Tax Regulations).

Assessment

In General

§ 301.6201 Statutory provisions; assessment authority.

Sec. 6201. *Assessment authority*—(a) *Authority of Secretary or delegate.* The Secretary or his delegate is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) *Taxes shown on return.* The Secretary or his delegate shall assess all taxes determined by the taxpayer or by the Secretary or his delegate as to which returns or lists are made under this title.

(2) *Unpaid taxes payable by stamp*—(A) *Omitted stamps.* Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof or whenever any transaction or act upon which a tax is required to be paid by means of a stamp occurs without the use of the proper stamp, it shall be the duty of the Secretary or his delegate, upon such information as he can obtain, to estimate the amount of tax which has been omitted to be paid and to make assessment therefor upon the person or persons the Secretary or his delegate determines to be liable for such tax.

(B) *Check or money order not duly paid.* In any case in which a check or money order received under authority of section 6311 as payment for stamps is not duly paid, the unpaid amount may be immediately assessed as if it were a tax imposed by this title, due at the time of such receipt, from the person who tendered such check or money order.

(3) *Erroneous income tax prepayment credits.* If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit for income tax withheld at the source, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary or his delegate in the same manner as in the case of a mathematical error appearing upon the return.

(b) *Estimated income tax.* No unpaid amount of estimated tax under section 6153 or 6154 shall be assessed.

[1] In process of preparation.

(c) *Compensation of child.* Any income tax under chapter 1 assessed against a child, to the extent attributable to amounts includible in the gross income of the child, and not of the parent, solely by reason of section 73 (a), shall, if not paid by the child, for all purposes be considered as having also been properly assessed against the parent.

(d) *Deficiency proceedings.* For special rules applicable to deficiencies of income, estate, and gift taxes, see subchapter B.

§ 301.6201–1 Assessment authority.

(a) *In general.* The district director is authorized and required to make all inquiries necessary to the determination and assessment of all taxes imposed by the Internal Revenue Code of 1954 or any prior internal revenue law. He is further authorized and required to make the determinations and the assessments of such taxes. However, certain inquiries and determinations are, by direction of the Commissioner, made by other officials, such as assistant regional commissioners. The term "taxes" includes interest, additional amounts, additions to the taxes, and assessable penalties. The authority of the district director to make assessments includes the following:

(1) *Taxes shown on return.* The district director shall assess all taxes determined by the taxpayer or by the district director and disclosed on a return or list.

(2) *Unpaid taxes payable by stamp.* (i) If without the use of the proper stamp:

(*a*) Any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof, or

(*b*) Any transaction or act upon which a tax is required to be paid by means of a stamp occurs;

the district director, upon such information as he can obtain, must estimate the amount of the tax which has not been paid and must make assessment therefor upon the person the district director determines to be liable for the tax. However, the district director may not assess any tax which is payable by stamp unless the taxpayer fails to pay such tax at the time and in the manner provided by law or regulations.

(ii) If a taxpayer gives a check or money order as payment for stamps but the check or money order is not paid upon presentment, then the district director shall assess the amount of the check or money order against the taxpayer as if it were a tax due at the time the check or money order was received by the district director.

(3) *Erroneous income tax prepayment credits.* If the amount of income tax withheld or the amount of estimated income tax paid is overstated by a taxpayer on a return or on a claim for refund, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund shall be assessed by the district director in the same manner as in the case of a mathematical error on the return. See section 6213 (b) (1), relating to exceptions to restrictions on assessment.

(b) *Estimated income tax.* The district director shall not assess any amount of estimated income tax required to be paid under section 6153 or 6154 which is unpaid.

(c) *Compensation of child.* Any income tax assessed against a child, to the extent of the amount attributable to income included in the gross income of the child solely by reason of section 72 (a) or the corresponding provision of prior law, if not paid by the child, shall, for the purposes of the income tax imposed by chapter 1 of the Code (or the corresponding provisions of prior law), be considered as having also been properly assessed against the parent. In any case in which the earnings of the child are included in the gross income of the child solely by reason of section 73(a) or the corresponding provision of prior law, the parent's liability is an amount equal to the amount by which the tax assessed against the child (and not paid by him) has been increased by reason of the inclusion of such earnings in the gross income of the child. Thus, if for the calendar year 1954 the child has income of $1,000 from investments and of $3,000 for services rendered, and the latter amount is includible in the gross income of the child under section 73 (a) and the child has no wife or dependents, the tax liability determined under section 3 is $625. If the child had only the investment income of $1,000, his tax liability would be $62. If the tax of $625 is assessed against the child, the difference between $625 and $62, or $563, is the amount of such tax which is considered to have been properly assessed against the parent, if not paid by the child.

§ 301.6202 Statutory provisions; establishment by regulations of mode or time of assessment.

Sec. 6202. *Establishment by regulations of mode or time of assessment.* If the mode or time for the assessment of any internal revenue tax (including interest, additional amounts, additions to the tax, and assessable penalties) is not otherwise provided for, the Secretary or his delegate may establish the same by regulations.

§ 301.6203 Statutory provisions; method of assessment.

Sec. 6203. *Method of assessment.* The assessment shall be made by recording the liability of the taxpayer in the office of the Secretary or his delegate in accordance with rules or regulations prescribed by the Secretary or his delegate. Upon request of the taxpayer, the Secretary or his delegate shall furnish the taxpayer a copy of the record of the assessment.

§ 301.6203–1 Method of assessment.

The district director shall appoint one or more assessment officers, including assessment officers in a Service Center servicing his district, and the assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record. The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, the district director or the director of a Service Center shall furnish the taxpayer a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.

§ 301.6204 Statutory provisions; supplemental assessments.

Sec. 6204. *Supplemental assessments*—(a) *General rule.* The Secretary or his delegate may, at any time within the period prescribed for assessment, make a supplemental assessment whenever it is ascer-

tained that any assessment is imperfect or incomplete in any material respect.

(b) *Restrictions on assessment.* For restrictions on assessment of deficiencies in income, estate, and gift taxes, see section 6213.

§ 301.6204–1 Supplemental assessments.

If any assessment is incomplete or incorrect in any material respect, the district director, subject to the restrictions with respect to the assessment of deficiencies in income, estate, and gift taxes, and subject to the applicable period of limitation, may make a supplemental assessment for the purpose of correcting or completing the original assessment.

§ 301.6205 Statutory provisions; special rules applicable to certain employment taxes.

SEC. 6205. *Special rules applicable to certain employment taxes*—(a) *Adjustment of tax*—(1) *General rule.* If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of wages or compensation, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulations prescribe.

(2) *United States as employer.* For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(b) *Underpayments.* If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of wages or compensation and the underpayment cannot be adjusted under subsection (a) of this section, the amount of the underpayment shall be assessed and collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

§ 301.6205–1 Special rules applicable to certain employment taxes.

For regulations under section 6205, see § 31.6205–1 of this chapter (Employment Tax Regulations).

§ 301.6206 Statutory provisions; special rules applicable to excessive claims under sections 6420 and 6421.

SEC. 6206. *Special rules applicable to excessive claims under sections 6420 and 6421.* Any portion of a payment made under section 6420 or 6421 which constitutes an excessive amount (as defined in section 6675 (b)), and any civil penalty provided by section 6675, may be assessed and collected as if it were a tax imposed by section 4081 and as if the person who made the claim were liable for such tax. The period for assessing any such portion, and for assessing any such penalty, shall be 3 years from the last day prescribed for the filing of the claim under section 6420 or 6421, as the case may be.

[Sec. 6206 as added by sec. 4 (b) (1), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 90), and as amended by sec. 208 (d) (1), Highway Revenue Act 1956 (70 Stat. 396)]

§ 301.6206–1 Special rules applicable to excessive claims under sections 6420 and 6421.

For regulations under section 6206, see § 48.6206–1 of this chapter (Manufacturers and Retailers Excise Tax Regulations).

§ 301.6207 Statutory provisions; cross references.

SEC. 6207. *Cross references.* (1) For prohibition of suits to restrain assessment of any tax, see section 7421.

(2) For prohibition of assessment of taxes against insolvent banks, see section 7507.

(3) For assessment where property subject to tax has been sold in a distraint proceeding without the tax having been assessed prior to such sale, see section 6342.

(4) For assessment with respect to taxes required to be paid by chapter 52, see section 5703.

(5) For assessment in case of distilled spirits removed from place where distilled and not deposited in bonded warehouse, see section 5006 (c).

(6) For period of limitation upon assessment, see chapter 66.

(7) For assessment under the provisions of the Tariff Act of 1930 of the taxes imposed by section 4501(b), and subchapters A, B, C, D, and E of chapter 38, see sections 4504 and 4601, respectively.

[Sec. 6206 as renumbered 6207 by sec. 4(b) (1), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 90), and as amended by sec. 204 (2), (3), Excise Tax Technical Changes Act 1958 (72 Stat. 1428)]

DEFICIENCY PROCEDURES

§ 301.6211 Statutory provisions; definition of a deficiency.

SEC. 6211. *Definition of a deficiency*—(a) *In general.* For purposes of this title in the case of income, estate, and gift taxes, imposed by subtitles A and B, the term "deficiency" means the amount by which the tax imposed by subtitles A or B exceeds the excess of—

(1) The sum of

(A) The amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus

(B) The amounts previously assessed (or collected without assessment) as a deficiency, over—

(2) The amount of rebates, as defined in subsection (b) (2), made.

(b) *Rules for application of subsection (a).* For purposes of this section—

(1) The tax imposed by chapter 1 and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, and without regard to so much of the credit under section 32 as exceeds 2 percent of the interest on obligations described in section 1451.

(2) The term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by subtitles A or B was less than the excess of the amount specified in subsection (a) (1) over the rebates previously made.

(3) The computation by the Secretary or his delegate, pursuant to section 6014, of the tax imposed by chapter 1 shall be considered as having been made by the taxpayer and the tax so computed considered as shown by the taxpayer upon his return.

§ 301.6211–1 Deficiency defined.

(a) In the case of the income tax imposed by subtitle A of the Code, the estate tax imposed by chapter 11, subtitle B, of the Code, or the gift tax imposed by chapter 12, subtitle B, of the Code, the term "deficiency" means the excess of the tax (income, estate, or gift tax, as the case may be) over the sum of the amount shown as such tax by the taxpayer upon his return and the amounts previously assessed (or collected without assessment) as a deficiency; but such sum shall first be reduced by the amount of rebates made. If no return is made, or if the return (except a return of income tax on Form 1040A pursuant to section 6014) does not show any tax, for the purpose of the definition "the amount shown as the tax by the taxpayer upon his return" shall be considered as zero. Accordingly, in any such case, if no deficiencies with respect to the tax have been assessed, or collected without assessment, and no rebates with respect to the tax have been made, the deficiency is the amount of the tax imposed by subtitle A, chapter 11, or chapter 12. Additional tax shown on an "amended return", so-called, filed after the due date of the return, is a deficiency within the meaning of the Code.

(b) For purposes of the definition, the income tax imposed by subtitle A and the income tax shown on the return shall both be determined without regard to the credit provided in section 31 for income tax withheld at the source and without regard to so much of the credit provided in section 32 for income taxes withheld at the source as exceeds 2 percent of the interest on tax-free covenant bonds described in section 1451. Payments on account of estimated income tax, like other payments of tax by the taxpayer, shall likewise be disregarded in the determination of a deficiency.

(c) The computation by the district director, pursuant to section 6014 (a), of the income tax imposed by subtitle A shall be considered as having been made by the taxpayer and the tax so computed shall be considered as the tax shown by the taxpayer upon his return.

(d) If so much of the credit claimed on the return for income taxes withheld at the source as exceeds 2 percent of the interest on tax-free covenant bonds is greater than the amount of such credit allowable, the unpaid portion of the tax attributable to such difference will be collected not as a deficiency but as an underpayment of the tax shown on the return.

(e) This section may be illustrated by the following examples:

Example (1). The amount of income tax shown by the taxpayer upon his return for the calendar year 1954 was $1,600. The taxpayer had no amounts previously assessed (or collected without assessment) as a deficiency. He claimed a credit in the amount of $2,050 for tax withheld at source on wages under section 3402, and a refund of $450 (not a rebate under section 6211) was made to him as an overpayment of tax for

the taxable year. It is later determined that the correct tax for the taxable year is $1,850. A deficiency of $250 is determined as follows:

Tax imposed by subtitle A		$1,850
Tax shown on return	$1,600	
Tax previously assessed (or collected without assessment) as a deficiency	None	
Total	1,600	
Amount of rebates made	None	
Balance		1,600
Deficiency		250

Example (2). The taxpayer made a return for the calendar year 1954 showing a tax of $1,250 before any credits for tax withheld at the source. He claimed a credit in the amount of $800 for tax withheld at source on wages under section 3402 and $60 for tax paid at source under section 1451 upon interest on bonds containing a tax-free covenant. The taxpayer had no amounts previously assessed (or collected without assessment) as a deficiency. The district director determines that the 2 percent tax paid at the source on tax-free covenant bonds is $40 instead of $60 as claimed by the taxpayer and that the tax imposed by subtitle A is $1,360 (total tax $1,400 less $40 paid at source on tax-free covenant bonds). A deficiency in the amount of $170 is determined as follows:

Tax imposed by subtitle A ($1,400 minus $40)		$1,360
Tax shown on return ($1,250 minus $60)	$1,190	
Tax previously assessed (or collected without assessment) as a deficiency	None	
Total	1,190	
Amount of rebates made	None	
Balance		1,190
Deficiency		170

(f) As used in section 6211, the term "rebate" means so much of an abatement, credit, refund, or other repayment as is made on the ground that the tax imposed by subtitle A or B of the Code is less than the excess of (1) the amount shown as the tax by the taxpayer upon his return increased by the amount previously assessed (or collected without assessment) as a deficiency over (2) the amount of rebates previously made. For example, assume that the amount of income tax shown by the taxpayer upon his return for the taxable year is $600 and the amount claimed as a credit under section 31 for income tax withheld at the source is $900. If the district director determines that the tax imposed by subtitle A is $600 and makes a refund of $300, no part of such refund constitutes a "rebate" since the refund is not made on the ground that the tax imposed by subtitle A is less than the tax shown on the return. If, however, the district director determines that the tax imposed by subtitle A is $500 and refunds $400, the amount of $100 of such refund would constitute a rebate since it is made on the ground that the tax imposed by subtitle A ($500) is less than the tax shown on the return ($600). The amount of such rebate ($100) would be taken into account in arriving at the amount of any deficiency subsequently determined.

§ 301.6212 Statutory provisions; notice of deficiency.

SEC. 6212. *Notice of deficiency*—(a) *In general.* If the Secretary or his delegate determines that there is a deficiency in respect of any tax imposed by subtitles A or B, he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail.

(b) *Address for notice of deficiency*—(1) *Income and gift taxes.* In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by subtitle A or chapter 12, if mailed to the taxpayer at his last known address, shall be sufficient for purposes of subtitle A, chapter 12, and this chapter even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) *Joint income tax return.* In the case of a joint income tax return filed by husband and wife, such notice of deficiency may be a single joint notice, except that if the Secretary or his delegate has been notified by either spouse that separate residences have been established, then, in lieu of the single joint notice, a duplicate original of the joint notice shall be sent by certified mail or registered mail to each spouse at his last known address.

(3) *Estate tax.* In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by chapter 11, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for purposes of chapter 11 and of this chapter.

(c) *Further deficiency letters restricted*—(1) *General rule.* If the Secretary or his delegate has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213 (a), the Secretary or his delegate shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar year, or of estate tax in respect of the taxable estate of the same decedent, except in the case of fraud, and except as provided in section 6214 (a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213 (b) (1) (relating to mathematical errors), or in section 6861 (c) (relating to the making of jeopardy assessments).

(2) *Cross references.* For assessment as a deficiency notwithstanding the prohibition of further deficiency letters, in the case of—

(A) Deficiency attributable to change of election to take standard deduction where taxpayer and his spouse made separate returns, see section 144 (b).

(B) Deficiency attributable to gain on involuntary conversion, see section 1033 (a) (3) (C) and (D).

(C) Deficiency attributable to gain on sale or exchange of personal residence, see section 1034 (j).

(D) Deficiency attributable to war loss recoveries where prior benefit rule is elected, see section 1335.

[Sec. 6212 as amended by secs. 76, 89(b), Technical Amendments Act 1958 (72 Stat. 1661, 1665)]

§ 301.6212–1 Notice of deficiency.

(a) *General rule.* If a district director (or an assistant regional commissioner, appellate) determines that there is a deficiency in respect of income, estate, or gift tax imposed by subtitle A or B of the Code, he is authorized to notify the taxpayer of the deficiency by registered mail prior to September 3, 1958, and by either registered or certified mail on and after September 3, 1958.

(b) *Address for notice of deficiency*—(1) *Income and gift taxes.* Unless the district director for the district in which the return in question was filed has been notified under the provisions of section 6903 as to the existence of a fiduciary relationship, notice of a deficiency in respect of income tax or of gift tax shall be sufficient if mailed to the taxpayer at his last known address, even though such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(2) *Joint income tax returns.* If a joint income tax return has been filed by husband and wife, the district director (or assistant regional commissioner, appellate) may, unless the district director for the district in which such joint return was filed has been notified by either spouse that a separate residence has been established, send either a joint or separate notice of deficiency to the taxpayers at their last known address. If, however, the proper district director has been so notified, a separate notice of deficiency, that is, a duplicate original of the joint notice, must be sent by registered mail prior to September 3, 1958, and by either registered or certified mail on and after September 3, 1958, to each spouse at his or her last known address. The notice of separate residences should be addressed to the district director for the district in which the joint return was filed.

(3) *Estate tax.* In the absence of notice, under the provisions of section 6903 as to the existence of a fiduciary relationship, to the district director for the district in which the estate tax return was filed, notice of a deficiency in respect of the estate tax imposed by chapter 11, subtitle B, of the Code shall be sufficient if addressed in the name of the decedent or other person subject to liability and mailed to his last known address.

(c) *Further deficiency letters restricted.* If the district director (or assistant regional commissioner, appellate) mails to the taxpayer notice of a deficiency, and the taxpayer files a petition with the Tax Court within the prescribed period, no additional deficiency may be determined with respect to income tax for the same taxable year, gift tax for the same calendar year, or estate tax with respect to the taxable estate of the same decedent. This restriction shall not apply in the case of fraud, assertion of greater deficiencies before the Tax Court as provided in section 6214 (a), mathematical errors as provided in section 6213 (b) (1), or jeopardy assessments as provided in section 6861 (c).

§ 301.6213 Statutory provisions; restrictions applicable to deficiencies; petition to Tax Court.

SEC. 6213. *Restrictions applicable to deficiencies; petition to Tax Court*—(a) *Time for filing petition and restriction on assessment.* Within 90 days, or 150 days if the notice is addressed to a person outside the States of the Union and the District of Columbia, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax

Court for a redetermination of the deficiency. Except as otherwise provided in section 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 7421 (a), the making of such assessment or the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

(b) *Exceptions to restrictions on assessment*—(1) *Mathematical errors.* If the taxpayer is notified that, on account of a mathematical error appearing upon the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered as a notice of deficiency for the purposes of subsection (a) (prohibiting assessment and collection until notice of the deficiency has been mailed), or of section 6212(c)(1) (restricting further deficiency letters), or section 6512(a) (prohibiting credits or refunds after petition to the Tax Court), and the taxpayer shall have no right to file a petition with the Tax Court based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section.

(2) *Assessments arising out of tentative carryback adjustments.* If the Secretary or his delegate determines that the amount applied, credited, or refunded under section 6411 is in excess of the overassessment attributable to the carryback with respect to which such amount was applied, credited, or refunded, he may assess the amount of the excess as a deficiency as if it were due to a mathematical error appearing on the return.

(3) *Assessment of amount paid.* Any amount paid as a tax or in respect of a tax may be assessed upon the receipt of such payment notwithstanding the provisions of subsection (a). In any case where such amount is paid after the mailing of a notice of deficiency under section 6212, such payment shall not deprive the Tax Court of jurisdiction over such deficiency determined under section 6211 without regard to such assessment.

(c) *Failure to file petition.* If the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (a), the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the Secretary or his delegate.

(d) *Waiver of restrictions.* The taxpayer shall at any time (whether or not a notice of deficiency has been issued) have the right, by a signed notice in writing filed with the Secretary or his delegate, to waive the restrictions provided in subsection (a) on the assessment and collection of the whole or any part of the deficiency.

(e) *Cross references.* (1) For assessment as if a mathematical error on the return, in the case of erroneous claims for income tax prepayment credits, see section 6201 (a) (3).

(2) For assessments without regard to restrictions imposed by this section in the case of—

(A) Recovery of foreign income taxes, see section 905 (c).

(B) Recovery of foreign estate tax, see section 2016.

§ 301.6213–1 Restrictions applicable to deficiencies; petition to Tax Court.

(a) *Time for filing petition and restrictions on assessment*—(1) *Time for filing petition.* Within 90 days after notice of the deficiency is mailed (or within 150 days after mailing in the case of such notice addressed to a person outside the States of the Union and the District of Columbia), as provided in section 6212, a petition may be filed with the Tax Court of the United States for a redetermination of the deficiency. In determining such 90-day or 150-day period, Saturday, Sunday, or a legal holiday in the District of Columbia is not counted as the 90th or 150th day. In determining the time for filing a petition with the Tax Court in the case of a notice of deficiency mailed to a resident of Alaska prior to 12:01 p.m., e.s.t., January 3, 1959, and in the case of a notice of deficiency mailed to a resident of Hawaii prior to 4:00 p.m., e.d.s.t., August 21, 1959, the term "States of the Union" does not include Alaska or Hawaii, respectively, and the 150-day period applies. In determining the time within which a petition to the Tax Court may be filed in the case of a notice of deficiency mailed to a resident of Alaska after 12:01 p.m., e.s.t., January 3, 1959, and in the case of a notice of deficiency mailed to a resident of Hawaii after 4:00 p.m., e.d.s.t., August 21, 1959, the term "States of the Union" includes Alaska and Hawaii, respectively, and the 90-day period applies.

(2) *Restrictions on assessment.* Except as otherwise provided by this section, by section 6861 (a) (relating to jeopardy assessments of income, estate, and gift taxes), by section 6871 (a) (relating to immediate assessment of claims for income, estate, and gift taxes in bankruptcy and receivership cases), or by section 7485 (in case taxpayer petitions for a review of a Tax Court decision without filing bond), no assessment of a deficiency in respect of a tax imposed by subtitle A or B of the Code and no levy or proceeding in court for its collection shall be made until notice of deficiency has been mailed to the taxpayer, nor until the expiration of the 90-day or 150-day period within which a petition may be filed with the Tax Court, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. As to the date on which a decision of the Tax Court becomes final, see section 7481. Notwithstanding the provisions of section 7421(a), the making of an assessment or the beginning of a proceeding or levy which is forbidden by this paragraph may be enjoined by a proceeding in the proper court.

(b) *Exceptions to restrictions on assessment of deficiencies*—(1) *Mathematical errors.* If a taxpayer is notified of an additional amount of tax due on account of a mathematical error appearing upon the return, such notice is not deemed a notice of deficiency, and the taxpayer has no right to file a petition with the Tax Court upon the basis of such notice, nor is the assessment of such additional amount prohibited by section 6213 (a).

(2) *Tentative carryback adjustments.* (i) If the district director determines that any amount applied, credited, or refunded under section 6411 (b) with respect to an application for a tentative carryback adjustment is in excess of the overassessment properly attributable to the carryback upon which such application was based, he may assess the amount of the excess as a deficiency as if such deficiency were due to a mathematical error appearing on the return. That is, the district director may assess an amount equal to the excess, and such amount may be collected, without regard to the restrictions on assessment and collection imposed by section 6213 (a). Thus, the district director, for example, may assess such amount without regard to whether he has mailed the taxpayer a prior notice of deficiency. Either before or after assessing such an amount, the district director will notify the taxpayer that he has made, or will make, such assessment. Such notice will not constitute a notice of deficiency, and the taxpayer may not file a petition with the Tax Court of the United States based on such notice. However, the taxpayer within the applicable period of limitation may file a regular claim for credit or refund based on the carryback, if he has not already filed such a claim, and may maintain a suit based on such claim if it is disallowed or if it is not acted upon by the Internal Revenue Service within 6 months from the date the claim was filed.

(ii) The method provided in subdivision (i) of this subparagraph to recover any amount applied, credited, or refunded in respect of an application for a tentative carryback adjustment which the district director later determines should not have been so applied, credited, or refunded is not an exclusive method. Two other methods are available to recover such amount: (*a*) By way of a deficiency notice under section 6212; or (*b*) by a suit to recover an erroneous refund under section 7405. The district director, in his discretion, may proceed by way of any one or more of the three available methods to recover any amount which he determines was improperly applied, credited, or refunded in respect of an application for a tentative carryback adjustment.

(3) *Assessment of amount paid.* Any payment made after the mailing of a notice of deficiency which is made by the taxpayer as a payment with respect to the proposed deficiency may be assessed without regard to the restrictions on assessment and collection imposed by section 6213 (a) even though the taxpayer has not filed a waiver of restrictions on assessment as provided in section 6213 (d). A payment of all or part of the deficiency asserted in the notice together with the assessment of the amount so paid will not affect the jurisdiction of the Tax Court. If any payment is made before the mailing of a notice of deficiency, the district director is not prohibited by section 6213 (a) from assessing such amount, and the district director may assess such amount if he deems such action to be proper. If the district director assesses such amount, the assessment is taken into account in determining whether or not there is a deficiency for which a notice of deficiency must be issued. Thus, if

such a payment satisfies the taxpayer's tax liability, no notice of deficiency will be mailed and the Tax Court will have no jurisdiction over the matter. In any case in which there is a controversy as to the correct amount of the tax liability, the assessment of any amount pursuant to the provisions of section 6213 (b) (3) shall in no way be considered to be the acceptance of an offer by the taxpayer to settle such controversy.

(4) *Jeopardy.* If the district director believes that the assessment or collection of a deficiency will be jeopardized by delay, such deficiency shall be assessed immediately, as provided in section 6861 (a).

(c) *Failure to file petition.* If no petition is filed with the Tax Court within the period prescribed in section 6213(a), the district director shall assess the amount determined as the deficiency and of which the taxpayer was notified by registered or certified mail and the taxpayer shall pay the same upon notice and demand therefor. In such case the district director will not be precluded from determining a further deficiency and notifying the taxpayer thereof by registered or certified mail. If a petition is filed with the Tax Court the taxpayer should notify the district director who issued the notice of deficiency that the petition has been filed in order to prevent an assessment of the amount determined to be the deficiency.

(d) *Waiver of restrictions.* The taxpayer may at any time by a signed notice in writing filed with the district director waive the restrictions on the assessment and collection of the whole or any part of the deficiency. The notice must in all cases be filed with the district director or other authorized official under whose jurisdiction the audit or other consideration of the return in question is being conducted. The filing of such notice with the Tax Court does not constitute filing with the district director within the meaning of the Code. After such waiver has been acted upon by the district director and the assessment has been made in accordance with its terms, the waiver cannot be withdrawn.

§ 301.6214 Statutory provisions; determinations by Tax Court.

SEC. 6214. *Determinations by Tax Court*—(a) *Jurisdiction as to increase of deficiency, additional amounts, or additions to the tax.* The Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any additional amount, or addition to the tax should be assessed, if claim therefor is asserted by the Secretary or his delegate at or before the hearing or a rehearing.

(b) *Jurisdiction over other years.* The Tax Court in redetermining a deficiency of income tax for any taxable year or of gift tax for any calendar year shall consider such facts with relation to the taxes for other years as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other year has been overpaid or underpaid.

(c) *Final decisions of Tax Court.* For purposes of this chapter and subtitles A or B the date on which a decision of the Tax Court becomes final shall be determined according to the provisions of section 7481.

§ 301.6215 Statutory provisions; assessment of deficiency found by Tax Court.

SEC. 6215. *Assessment of deficiency found by Tax Court*—(a) *General rule.* If the taxpayer files a petition with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed and shall be paid upon notice and demand from the Secretary or his delegate. No part of the amount determined as a deficiency by the Secretary or his delegate but disallowed as such by the decision of the Tax Court which has become final shall be assessed or be collected by levy or by proceeding in court with or without assessment.

(b) *Cross references.* (1) For assessment or collection of the amount of the deficiency determined by the Tax Court pending appellate court review, see section 7485.

(2) For dismissal of petition by Tax Court as affirmation of deficiency as determined by the Secretary or his delegate, see section 7459 (d).

(3) For decision of Tax Court that tax is barred by limitation as its decision that there is no deficiency, see section 7459 (e).

(4) For assessment of damages awarded by Tax Court for instituting proceedings merely for delay, see section 6673.

(5) For treatment of certain deficiencies as having been paid, in connection with sale of surplus war-built vessels, see section 9 (b) (8) of the Merchant Ship Sales Act of 1946 (60 Stat. 48; 50 U. S. C. App. 1742).

(6) For rules applicable to Tax Court proceedings, see generally subchapter C of chapter 76.

(7) For proration of deficiency to installments, see section 6152 (c).

(8) For extension of time for paying amount determined as deficiency, see section 6161 (b).

§ 301.6215–1 Assessment of deficiency found by Tax Court.

Where a petition has been filed with the Tax Court, the entire amount redetermined as the deficiency by the decision of the Tax Court which has become final shall be assessed by the district director and the unpaid portion of the amount so assessed shall be paid by the taxpayer upon notice and demand therefor.

§ 301.6216 Statutory provisions; cross references.

SEC. 6216. *Cross references.* (1) For procedures relating to bankruptcy and receivership, see subchapter B of chapter 70.

(2) For procedures relating to jeopardy assessments, see subchapter A of chapter 70.

(3) For procedures relating to claims against transferees and fiduciaries, see chapter 71.

Collection

GENERAL PROVISIONS

§ 301.6301 Statutory provisions; collection authority.

SEC. 6301. *Collection authority.* The Secretary or his delegate shall collect the taxes imposed by the internal revenue laws.

§ 301.6301–1 Collection authority.

The taxes imposed by the internal revenue laws shall be collected by district directors of internal revenue. See, however, section 6304, relating to the collection of certain taxes under the provisions of the Tariff Act of 1930 (19 U.S.C. ch. 4).

§ 301.6302 Statutory provisions; mode or time of collection.

SEC. 6302. *Mode or time of collection*—(a) *Establishment by regulations.* If the mode or time for collecting any tax is not provided for by this title, the Secretary or his delegate may establish the same by regulations.

(b) *Discretionary method.* Whether or not the method of collecting any tax imposed by chapters 21, 31, 32, 33, section 4481 of chapter 36, sections 4501 (a) or 4511 of chapter 37, or sections 4701 or 4721 of chapter 39 is specifically provided for by this title, any such tax may, under regulations prescribed by the Secretary or his delegate, be collected by means of returns, stamps, coupons, tickets, books, or such other reasonable devices or methods as may be necessary or helpful in securing a complete and proper collection of the tax.

(c) *Use of Government depositaries.* The Secretary or his delegate may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the Secretary or his delegate.

[Sec. 6302 as amended by sec. 206(b), Highway Revenue Act 1956 (70 Stat. 391)]

§ 301.6302–1 Mode or time of collection of certain employment and excise taxes; use of Federal Reserve banks and authorized commercial banks in connection with the payment thereof.

For provisions relating to the mode or time of collection of certain employment and excise taxes and the use of Federal Reserve banks and authorized commercial banks in connection with the payment thereof, see the regulations relating to the particular tax.

§ 301.6303 Statutory provisions; notice and demand for tax.

SEC. 6303. *Notice and demand for tax*—(a) *General rule.* Where it is not otherwise provided by this title, the Secretary or his delegate shall, as soon as practicable, and within 60 days, after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

(b) *Assessment prior to last date for payment.* Except where the Secretary or his delegate believes collection would be jeopardized by delay, if any tax is assessed prior to the last date prescribed for payment of such tax, payment of such tax shall not be demanded under subsection (a) until after such date.

§ 301.6303–1 Notice and demand for tax.

(a) *General rule.* Where it is not otherwise provided by the Code, the district director shall, after the making of an assessment of a tax pursuant to section 6203, give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof. Such notice shall be given as soon as possible and within 60 days. However, the failure to give notice within 60 days does not invalidate the notice.

Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

(b) *Assessment prior to last date for payment.* If any tax is assessed prior to the last date prescribed for payment of such tax, the district director will not demand that such tax be paid before such last date, except where the district director believes collection would be jeopardized by delay.

§ 301.6304 Statutory provisions; collection under the Tariff Act.

SEC. 6304. *Collection under the Tariff Act.* For collection under the provisions of the Tariff Act of 1930 of the taxes imposed by section 4501 (b), and subchapters A, B, C, D, and E of chapter 38, see sections 4504 and 4601, respectively.

RECEIPT OF PAYMENT

§ 301.6311 Statutory provisions; payment by check or money order.

SEC. 6311. *Payment by check or money order*—(a) *Authority to receive.* It shall be lawful for the Secretary or his delegate to receive for internal revenue taxes, or in payment for internal revenue stamps, checks or money orders, to the extent and under the conditions provided in regulations prescribed by the Secretary or his delegate.

(b) *Check or money order unpaid*—(1) *Ultimate liability.* If a check or money order so received is not duly paid, the person by whom such check or money order has been tendered shall remain liable for the payment of the tax or for the stamps, and for all legal penalties and additions, to the same extent as if such check or money order had not been tendered.

(2) *Liability of banks and others.* If any certified, treasurer's, or cashier's check or any money order so received is not duly paid, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of the bank or trust company on which drawn or for the amount of such money order upon all the assets of the issuer thereof; and such amount shall be paid out of such assets in preference to any other claims whatsoever against such bank or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

§ 301.6311–1 Payment by check or money order.

(a) *Authority to receive*—(1) *In general.* (i) District directors may accept checks drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or money orders in payment for internal revenue taxes, provided such checks or money orders are collectible in United States currency at par. District directors may accept such checks or money orders in payment for internal revenue stamps, or for the prepayment of the taxes on wines as authorized by the regulations prescribed under chapter 51 of the Code, Part 240 of this chapter (Wine Regulations), to the extent and under the conditions prescribed in subparagraph (2) of this paragraph. A check or money order is payable at par only if the full amount thereof is payable without any deduction for exchange or other charges. As used in this section, the term "money order" means: (*a*) United States postal, bank, express, or telegraph money order; (*b*) money order issued by a domestic building and loan association (as defined in section 7701(a)(19)), or by a similar association incorporated under the laws of a possession of the United States; (*c*) a money order issued by such other organization as the Commissioner may designate; and (*d*) a money order described in subdivision (ii) of this subparagraph in cases therein described. However, the district director may refuse to accept any personal check whenever he has good reason to believe that such check will not be honored upon presentment.

(ii) An American citizen residing in a country with which the United States maintains direct exchange of money orders on a domestic basis may pay his tax by postal money order of such country. Such countries presently are: Antigua, the Bahamas, Barbados, Bermuda, British Guiana, British Honduras, British Virgin Islands, Canada, Canal Zone, Cuba, Dominica, Grenada, Jamaica, Montserrat, Nevis, St. Kitts, St. Lucia, St. Vincent, and Trinidad and Tobago.

(iii) If one check or money order is remitted to cover two or more persons' taxes, the remittance should be accompanied by a letter of transmittal clearly identifying—

(*a*) Each person whose tax is to be paid by the remittance;

(*b*) The amount of the payment on account of each such person; and

(*c*) The kind of tax paid.

(2) *Payment for internal revenue stamps; prepayment of wine tax.* The district director may accept checks and money orders described in subparagraph (1) of this paragraph in payment for internal revenue stamps other than stamps for taxes imposed under subchapter F, chapter 39, of the Code (relating to silver bullion), stamps for taxes imposed under chapter 34 of the Code (relating to documentary stamps), stamps for taxes on distilled spirits imposed under chapter 51 of the Code, including the rectification tax, and stamps for taxes imposed under chapter 52 of the Code (relating to tobacco and manufactures), and in prepayment of the taxes on wines as authorized by the regulations prescribed under chapter 51 of the Code, Part 240 of this chapter (Wine Regulations). The district director may accept in payment for such taxes certified, cashiers' or treasurers' checks drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States or money orders described in subparagraph (1) of this paragraph. However, if an application has been submitted by a person desiring to tender personal checks for such taxes or in prepayment of wine taxes, and the application has been approved by the district director, the district director may accept such personal checks as are described in subparagraph (1) (i) of this paragraph. The application shall be made to the district director and shall contain the applicant's name, address, firm name (if any), such financial information as will enable the district director to determine the amount of the credit to be extended to the applicant, and the approximate value of stamps to be purchased or the amount of wine taxes to be prepaid during the period fixed by the district director. The district director is authorized to approve or disapprove such application and, if the application is approved, to fix the maximum amount of the value of the internal revenue stamps or of the prepayment of the taxes on wines for which personal checks will be accepted and to prescribe such other limitations and conditions as he deems appropriate. The district director may, for good cause, discontinue at any time the acceptance of personal checks under the provisions of this subparagraph.

(b) *Checks or money orders not paid*—(1) *Ultimate liability.* The person who tenders any check (whether certified or uncertified, cashier's, treasurer's, or other form of check) or money order in payment for taxes or stamps is not released from his liability until the check or money order is paid; and, if the check or money order is not duly paid, he shall also be liable for all legal penalties and additions, to the same extent as if such check or money order had not been tendered. For the penalty in case a check or money order is not duly paid, see section 6657 and § 301.6657–1. For assessment of the amount of a check or money order not duly paid, see section 6201(a)(2)(B) and paragraph (a)(2)(ii) of § 301.6201–1.

(2) *Liability of banks and others.* If any certified, treasurer's, or cashier's check or money order is not duly paid, the United States shall have a lien for the amount of such check upon all assets of the bank or trust company on which drawn or for the amount of such money order upon the assets of the issuer thereof. The unpaid amount shall be paid out of such assets in preference to any other claims against such bank or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank. In addition, the Government has the right to exact payment from the person required to make the payment.

§ 301.6312 Statutory provisions; payment by United States notes and certificates of indebtedness.

SEC. 6312. *Payment by United States notes and certificates of indebtedness*—(a) *General rule.* It shall be lawful for the Secretary or his delegate to receive, at par with an adjustment for accrued interest, Treasury bills, notes and certificates of indebtedness issued by the United States in payment of any internal revenue taxes, or in payment for internal revenue stamps, to the extent and under the conditions provided in regulations prescribed by the Secretary or his delegate.

(b) *Cross references.* (1) For authority to receive silver certificates, see section 5 of the act of June 19, 1934 (48 Stat. 1178; 31 U. S. C. 405a).

(2) For full legal tender status of all coins and currencies of the United States, see section 43 (b) (1) of the Agricultural Adjustment Act, as amended (48 Stat. 52, 113; 31 U. S. C. 462).

(3) For authority to receive obligations under the Second Liberty Bond Act, see section 20 (b) of that act, as amended (56 Stat. 189; 31 U. S. C. 754b).

§ 301.6312–1 Treasury certificates of indebtedness, Treasury notes, and Treasury bills acceptable in payment of internal revenue taxes or stamps.

(a) Treasury certificates of indebtedness, Treasury notes, or Treasury bills of any series (not including interim receipts issued by Federal reserve banks in lieu of definitive certificates, notes, or bills) may be tendered at or before maturity in payment of internal revenue taxes due on the date (or in payment for stamps purchased on the date), on which the certificates, notes, or bills mature, or in payment of internal revenue taxes due on a specified prior date, but only if such certificates, notes, or bills, according to the express terms of their issue, are made acceptable in payment of such taxes or for the purchase of stamps. If the taxes for which the certificates, notes, or bills are tendered in payment become due, or the stamps are purchased, on the same date as that on which such certificates, notes, or bills mature, they will be accepted at par plus accrued interest, if any, payable with the principal (not represented by coupons attached) in payment of such taxes or stamps. If the taxes for which the certificates, notes, or bills are tendered in payment become due, or the stamps are purchased, on a date prior to that on which the certificates, notes, or bills mature, they will be accepted at the value specified in the terms under which such certificates, notes, or bills were issued. All interest coupons attached to Treasury certificates of indebtedness or Treasury notes shall be detached by the taxpayer before such certificates or notes are tendered in payment of taxes or stamps.

(b) Receipts given by a district director for Treasury certificates of indebtedness, Treasury notes, or Treasury bills received in payment of internal revenue taxes or for stamps as provided in this section shall contain an adequate description of such certificates, notes, or bills, and a statement of the value, including accrued interest, if any, payable with the principal (not represented by coupons attached), at which accepted, and shall show that the certificates, notes, or bills are tendered by the taxpayer and received by the district director, subject to no condition, qualification, or reservation whatsoever, in payment of an amount of taxes or for stamps no greater than such value. Any certificate, note, or bill offered in payment of internal revenue taxes or for stamps subject to any condition, qualification, or reservation, or for any greater amount than the value at which acceptable in payment of taxes or stamps, as specified in the terms under which such certificate, note, or bill was issued, shall not be deemed to be duly tendered and shall be returned to the taxpayer.

(c) For the purpose of saving taxpayers the expense of transmitting Treasury certificates of indebtedness, Treasury notes, or Treasury bills to the office of the district director in whose district the taxes are payable, or stamps are to be purchased, taxpayers desiring to pay taxes, or purchase stamps, with such certificates, notes, or bills acceptable in payment of taxes or for the purchase of stamps may deposit such certificates, notes, or bills with a Federal reserve bank or branch, or with the Office of the Treasurer of the United States, Treasury Building, Washington, D. C. In such cases, the Federal reserve bank or branch, or the Office of the Treasurer of the United States, shall issue a receipt in the name of the district director, describing the certificates, notes, or bills by par or dollar face amount and stating on the face of the receipt that the certificates, notes, or bills represented thereby are held by the bank or branch, or the Office of the Treasurer of the United States, for redemption at the value specified in the terms under which the certificates, notes, or bills were issued, and for application of the proceeds in payment of taxes due or for the purchase of stamps on a specified date by the taxpayer named therein.

§ 301.6312–2 Certain Treasury savings notes acceptable in payment of certain internal revenue taxes.

According to the express terms of their issue, the following series of Treasury savings notes are presently acceptable in payment of income taxes (current and back, personal and corporation taxes, and excess profits taxes) and estate and gift taxes (current and back):

(a) Treasury Savings Notes, Series A,
(b) Treasury Savings Notes, Series B,
(c) Treasury Savings Notes, Series C.

§ 301.6313 Statutory provisions; fractional parts of a cent.

SEC. 6313. *Fractional parts of a cent.* In the payment of any tax imposed by this title not payable by stamp, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

§ 301.6313–1 Fractional parts of a cent.

In the payment of any tax not payable by stamp, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. Fractional parts of a cent shall not be disregarded in the computation of taxes.

§ 301.6314 Statutory provisions; receipt for taxes.

SEC. 6314. *Receipt for taxes*—(a) *General rule.* The Secretary or his delegate shall, upon request, give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered; but no receipts shall be issued in lieu of a stamp representing a tax.

(b) *Duplicate receipts for payment of estate taxes.* The Secretary or his delegate shall, upon request, give to the person paying the tax under chapter 11 (relating to the estate tax) duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

(c) *Cross references.* (1) For receipt required to be furnished by employer to employee with respect to employment taxes, see section 6051.

(2) For receipt of discharge of executor from personal liability, see section 2204.

§ 301.6314–1 Receipt for taxes.

(a) *In general.* The district director shall issue a receipt for each tax payment made in cash (other than a payment for stamps sold and delivered). In the case of payments made by check, the canceled check is usually a sufficient receipt. However, upon request, the district director shall issue a receipt for such payment (other than a payment for stamps sold and delivered). No receipt shall be issued in lieu of a stamp representing a tax, whether the payment is in cash or otherwise.

(b) *Duplicate receipt for payment of estate taxes.* Upon request, the district director will issue duplicate receipts to the person paying the estate tax, either of which will be sufficient evidence of such payment and entitle the executor to be credited with the amount by any court having jurisdiction to audit or settle his accounts. For definition of the term "executor", see section 2203.

§ 301.6315 Statutory provisions; payments of estimated income tax.

SEC. 6315. *Payments of estimated income tax.* Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income taxes imposed by subtitle A for the taxable year.

§ 301.6315–1 Payments of estimated income tax.

The payment of any installment of the estimated income tax (see sections 6015 and 6016) shall be considered payment on account of the income tax for the taxable year for which the estimate is made. The aggregate amount of the payments of estimated tax should be entered upon the income tax return for such taxable year as payments to be applied against the tax shown on such return.

§ 301.6316 Statutory provisions; payment by foreign currency.

SEC. 6316. *Payment by foreign currency.* The Secretary or his delegate is authorized in his discretion to allow payment of taxes in the currency of a foreign country under such circumstances and subject to such conditions as the Secretary or his delegate may by regulations prescribe.

§ 301.6316–1 Persons entitled to pay tax in foreign currency.

Subject to the provisions of §§ 301.6316–3 to 301.6316–5, inclusive, that portion of the tax which is attributable to amounts received by a citizen of the United States in nonconvertible foreign currency disbursed from funds made available to a foundation or commission established in a foreign country pursuant to an agreement entered into under the authority of section 32(b) of the Surplus Property Act of 1944, as amended, (50 U.S.C. App. 1641(b)(2)), may be paid in that currency if:

(a) The amounts so received (1) constitute either a grant made for the authorized purposes of the agreement or compensation for personal services per-

formed in the employ of the foundation or commission, and (2) are treated as income from sources without the United States under the provisions of sections 861 to 864, inclusive, and §§ 1.861–1 to 1.864, inclusive, of this chapter (Income Tax Regulations); and

(b) At least 75 percent of the entire amount of the grant or compensation paid to the citizen by that foundation or commission is paid in such nonconvertible foreign currency.

§ 301.6316–2 Definitions.

For purposes of §§ 301.6316–1 to 301.6316–7, inclusive:

(a) The term "tax" means the income tax imposed for the taxable year by chapter 1 of the Code.

(b) The term "nonconvertible foreign currency" means currency of the government of a foreign country which, owing to (1) monetary, exchange, or other restrictions imposed by the foreign country, (2) an agreement entered into with the United States of America, or (3) the terms and conditions of the United States Government grant, is not convertible into United States dollars or into other money which is convertible into United States dollars. The term shall not, however, include currency which, notwithstanding such restrictions, agreement, terms, or conditions, is in fact converted into United States dollars or into property which is readily disposable for United States dollars.

(c) If the taxpayer computes taxable income under the accrual method, then the term "received" shall be construed to mean "accrued".

§ 301.6316–3 Allocation of tax attributable to foreign currency.

(a) *Adjusted gross income ratio.* The portion of the tax which is attributable to amounts received in nonconvertible foreign currency shall, for purposes of applying § 301.6316–1 to the currency of each foreign country, be the amount by which:

(1) The amount which bears the same ratio to the entire tax for the taxable year as (i) the taxpayer's adjusted gross income received in that currency bears to (ii) the adjusted gross income determined under section 62 by taking into account the entire gross income and all deductions allowable under that section without distinction as to amounts received in foreign currency, exceeds

(2) The total of the allowable credits against tax, and payments on account of tax, which are properly allocable to the amount of that currency included in gross income.

(b) *Example.* (1) For the calendar year 1955 Mr. Jones and his wife filed a joint return on which the adjusted gross income is as follows, after amounts received in foreign currency had been properly translated into United States dollars for tax computation purposes:

Fulbright grant received by Mr. Jones in nonconvertible foreign currency	$8,000
Dividends received by Mr. Jones entitled to dividends-received credit	500
Compensation for personal services of Mrs. Jones	3,000
Net profit from business carried on by Mrs. Jones	2,500
Total adjusted gross income	14,000

(2) The following amounts are allowable as properly deductible from adjusted gross income, no determination being made as to whether or not any part of them is properly allocable to the Fulbright grant:

Deduction for personal exemptions	$3,000
Charitable contributions	500
Interest expense	400
Taxes	300
Total allowable deductions	4,200

(3) For the taxable year the following amounts are allowable as credits against the tax, or as payments on account of the tax:

Foreign tax credit for foreign taxes paid on Fulbright grant		$300.00
Dividends-received credit		20.00
Credit for income tax withheld upon compensation of Mrs. Jones		304.80
Payments of estimated tax (see § 301.6316–6 (b) (2) for determination of amounts):		
United States dollars	$426.32	
Foreign currency	893.88	
		1,320.20
Total allowable credits and payments		1,945.00

(4) The portion of the tax which is attributable to amounts received in nonconvertible foreign currency is $33.49, determined as follows:

Adjusted gross income	$14,000.00
Less: Allowable deductions	4,200.00
Taxable income	9,800.00
Tax computed under section 2	2,148.00
Ratio of adjusted gross income received in nonconvertible foreign currency to entire adjusted gross income ($8,000÷$14,000) (percent)	$57.14
Portion of tax attributable to nonconvertible foreign currency ($2,148×57.14 percent)	1,227.37
Less:	
Credit for foreign taxes paid on Fulbright grant	$300.00
Payment in foreign currency of estimated tax	893.88
	1,193.88
Portion of tax attributable to amounts received in nonconvertible foreign currency	33.49

§ 301.6316–4 Return requirements.

(a) *Place for filing.* A return of income which includes amounts received in foreign currency on which the tax is paid in accordance with § 301.6316–1 shall be filed with the Director of International Operations, Internal Revenue Service, Washington 25, D.C. For the time for filing income tax returns, see sections 6072 and 6081 and §§ 1.6072–1, 1.6081–1, and 1.6081–2 of this chapter (Income Tax Regulations).

(b) *Statements required.* (1) A statement, certified by the United States educational foundation or commission, shall be attached to the return showing that for the taxable year involved the taxpayer is entitled to pay tax in foreign currency in accordance with section 6316 and the regulations thereunder. This statement shall disclose the amount of the grant or compensation received by the taxpayer during the taxable year under the authority of section 32 (b) of the Surplus Property Act of 1944, as amended (50 U.S.C. App. 1641(b)(2)) and the amount thereof paid in nonconvertible foreign currency. It shall also state that with respect to the grant or compensation the percentage requirement of paragraph (b) of § 301.6316–1 is satisfied.

(2) The taxpayer shall also attach to the return a detailed statement showing (i) the computation, in the manner prescribed by § 301.6316–3, of the portion of the tax attributable to amounts received in nonconvertible foreign currency and (ii) the rates of exchange used in determining the tax liability in United States dollars. See paragraph (c) of § 301.6316–5.

§ 301.6316–5 Manner of paying tax by foreign currency.

(a) *Time and place to pay.* The unpaid tax required to be shown on a return filed in accordance with § 301.6316–4, whether payable in whole or in part in foreign currency, is due and payable to the Director of International Operations, Internal Revenue Service, Washington 25, D.C., at the time the return is filed. However, see paragraph (d) of this section with respect to the depositing of the foreign currency with the disbursing officer of the Department of State.

(b) *Certified statement.* Every taxpayer who desires to pay tax in foreign currency under the provisions of § 301.6316–1 shall first obtain the certified statement referred to in paragraph (b) (1) of § 301.6316–4.

(c) *Determination of the tax.* In determining the tax payable for the taxable year in United States dollars, the taxpayer shall use the rates of exchange which most clearly reflect the correct tax liability in dollars, whether it be the official rate, the open market rate, or any other appropriate rate. After determining the correct tax liability in United States dollars the taxpayer shall then ascertain, in accordance with the principles of § 301.6316–3, the portion of the tax which is attributable to amounts received in nonconvertible foreign currency.

(d) *Deposit of foreign currency with disbursing officer.* (1) After the portion of the tax which is attributable to amounts received in nonconvertible foreign currency is determined in United States dollars, the amount so determined shall be deposited in the same nonconvertible foreign currency with the disbursing officer of the Department of State for the foreign country in which the foundation or commission paying the grant or compensation is located. The amount of foreign currency to be deposited shall be that amount which, when converted at the rate of exchange used on the date of deposit by that disbursing officer for the acquisition of such currency for his official disbursements, equals the portion of the tax so determined in United States dollars.

(2) The disbursing officer may rely upon the taxpayer for the determination of the amount of tax payable in foreign

currency but may not accept any such currency for deposit until the taxpayer has presented for inspection the certified statement referred to in paragraph (b) (1) of § 301.6316–4. Upon acceptance of foreign currency for deposit the disbursing officer shall give the taxpayer a receipt in duplicate showing the name and address of the depositor, the date of the deposit, the amount of foreign currency deposited, and its equivalent in United States dollars on the date of deposit.

(3) Every taxpayer making a deposit of foreign currency in accordance with this paragraph shall attach to the return required to be filed in accordance with § 301.6316–4, in part or full payment of the taxes shown thereon, the original of the receipt given by the disbursing officer and shall pay to the Director of International Operations in United States dollars the balance, if any, of the tax shown to be due. Tender of such receipt to the Director of International Operations shall be considered as payment of tax in an amount equal to the United States dollars represented by the receipt.

(4) A taxpayer shall make the deposit required by this paragraph in ample time to permit him to attach the receipt to his return for filing within the time prescribed by section 6072 or 6081 and §§ 1.6072–1, 1.6081–1, and 1.6081–2 of this chapter (Income Tax Regulations).

§ 301.6316–6 Declarations of estimated tax.

(a) *Filing of declaration.* A declaration of estimated tax in respect of amounts on which the tax is to be paid in foreign currency under the provisions of § 301.6316–1 shall be filed with the Director of International Operations, Internal Revenue Service, Washington 25, D.C., and shall have attached thereto the statements required by paragraph (b) (1) and (2) (i) of § 301.6316–4 in respect of the tax return except that the statement certified by the foundation or commission may be based upon amounts expected to be received by the taxpayer during the taxable year if they are not in fact known at the time of certification. A copy of this certified statement shall be retained by the taxpayer for the purpose of exhibiting it to the disbursing officer when making installment deposits of foreign currency under the provisions of paragraph (c) of this section. For the time for filing declarations of estimated tax, see sections 6073 and 6081 and §§ 1.6073–1 to 1.6073–4, inclusive, and §§ 1.6081–1 and 1.6081–2 of this chapter (Income Tax Regulations).

(b) *Determination of estimated tax—*(1) *Allocation of tax attributable to foreign currency.* In determining the amount of estimated tax for purposes of this section, all items of income, deduction, and credit, whether or not attributable to amounts received in nonconvertible foreign currency, shall be taken into account. The portion of the estimated tax which is attributable to amounts to be received during the taxable year in nonconvertible foreign currency shall be determined consistently with the manner prescribed by § 301.6316–3.

(2) *Example.* (i) For the calendar year 1955 Mr. Jones and his wife filed a joint declaration of estimated tax in the determination of which the adjusted gross income was estimated to be as follows, after amounts to be received in foreign currency had been properly translated into United States dollars for tax computation purposes:

Fulbright grant to be received by Mr. Jones in nonconvertible foreign currency	$8,000
Dividends to be received by Mr. Jones entitled to dividends-received credit	375
Compensation to be received by Mrs. Jones for personal services	3,000
Net profit to be derived from business carried on by Mrs. Jones	1,625
Total estimated adjusted gross income	13,000

(ii) The following amounts were determined to be allowable as properly deductible from estimated adjusted gross income, no determination being made as to whether or not any part of them was properly allocable to the Fulbright grant:

Deduction for personal exemptions	$3,000
Charitable contributions	300
Interest expense	400
Taxes	300
Total allowable deductions	4,000

(iii) The following estimated amounts were determined to be allowable as credits against the tax for the taxable year:

Foreign tax credit for foreign taxes to be paid on Fulbright grant	$300.00
Credit for income tax expected to be withheld upon compensation of Mrs. Jones	304.80
Dividends-received credit	15.00
Total allowable estimated credits	619.80

(iv) The portion of the estimated tax which is attributable to amounts to be received during the taxable year in nonconvertible foreign currency is $893.88, determined as follows:

Estimated adjusted gross income	$13,000.00
Less: Allowable deductions	4,000.00
Estimated taxable income	9,000.00
Tax computed under section 2	1,940.00
Ratio of estimated adjusted gross income to be received in nonconvertible foreign currency to entire estimated adjusted gross income ($8,000÷$13,000) (percent)	61.54
Portion of above tax attributable to nonconvertible foreign currency ($1,940×61.54 percent)	1,193.88
Less: Credit for foreign taxes expected to be paid on Fulbright grant	300.00
Portion of estimated tax which is attributable to amounts to be received during the taxable year in nonconvertible foreign currency	893.88

(v) The portion of the estimated tax which is payable in United States dollars is $426.32, determined as follows:

Tax computed under section 2	$1,940.00
Less: Total allowable estimated credits	619.80
Total estimated tax	1,320.20
Less: Portion of estimated tax payable in foreign currency	893.88
Portion of estimated tax payable in United States dollars	426.32

(c) *Payment of estimated tax.* (1) The provisions of § 301.6316–5 relating to the certified statement, determination of the tax, and the depositing of the foreign currency shall apply for purposes of this section. The full amount of estimated tax payable in foreign currency, as determined under paragraph (b) of this section, may be deposited before the date prescribed for the payment thereof.

(2) Every taxpayer making a deposit of foreign currency in accordance with this paragraph shall tender to the Director of International Operations, Internal Revenue Service, Washington 25, D. C., the original of the receipt from the disbursing officer as payment, to the extent of the amount represented thereby in United States dollars, of the estimated tax. For the dates prescribed for the payment of estimated tax, see sections 6153 and 6161 and §§ 1.6153–1 to 1.6153–4, inclusive, and § 1.6161–1 of this chapter (Income Tax Regulations). A taxpayer should make the deposit required by this paragraph in ample time to permit him to tender such receipt by the date prescribed for payment of the estimated tax.

(d) *Credit on return for the taxable year.* The receipt given by the disbursing officer of the Department of State and tendered in payment of estimated tax under this section shall, for purposes of paragraph (a) (2) of § 301.6316–3, be considered as payment on account of the tax for the taxable year. The amount so considered to be paid shall be the amount in United States dollars represented by the receipt.

§ 301.6316–7 Refunds and credits in foreign currency.

(a) *Refunds.* The refund of any overpayment of tax which has been paid under section 6316 in foreign currency may, in the discretion of the Commissioner, be made in the same foreign currency by which the tax was paid. The amount of any such refund made in foreign currency shall be the amount of the overpayment in United States dollars converted, on the date of the refund check, at the rate of exchange then used for his official disbursements by the disbursing officer of the Department of State in the country where the foreign currency was originally deposited.

(b) *Credits.* Unless otherwise in the best interest of the Internal Revenue Service, no credit of any overpayment of tax which has been paid under section 6316 in foreign currency shall be allowed against any outstanding liability of the person making the overpayment except in respect of that portion of the liability which, in accordance with § 301.6316–1, would otherwise be permitted to be paid in the same foreign currency.

§ 301.6316–8 Interest, additions to tax, etc.

Any reference in §§ 301.6316–1 to 301.6316–7, inclusive, to "tax" shall be deemed also to refer to the interest, additions to the tax, additional amounts, and penalties attributable to the tax.

LIEN FOR TAXES

§ 301.6321 Statutory provisions; lien for taxes.

SEC. 6321. *Lien for taxes.* If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

§ 301.6321–1 Lien for taxes.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax; or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States, upon all property and rights to property, whether real or personal, tangible or intangible, belonging to such person. The lien attaches to all property and rights to property belonging to such person at any time during the period of the lien, including any property or rights to property acquired by such person after the lien arises. For the special lien for estate and gift taxes, see section 6324 and § 301.6324–1.

§ 301.6322 Statutory provisions; period of lien.

SEC. 6322. *Period of lien.* Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed is satisfied or becomes unenforceable by reason of lapse of time.

§ 301.6323 Statutory provisions; validity against mortgagees, pledgees, purchasers, and judgment creditors.

SEC. 6323. *Validity against mortgagees, pledgees, purchasers, and judgment creditors*—(a) *Invalidity of lien without notice.* Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) *Under State or territorial laws.* In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) *With clerk of district court.* In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) *With clerk of district court for District of Columbia.* In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) *Form of notice.* If the notice filed pursuant to subsection (a) (1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection, (a) (2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien.

(c) *Exception in case of securities*—(1) *Exception.* Even though notice of a lien provided in section 6321 has been filed in the manner prescribed in subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) *Definition of security.* As used in this subsection, the term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(d) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed under subsection (a), the Secretary or his delegate is authorized to provide by rules or regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

§ 301.6323–1 Validity of lien against mortgagees, pledgees, purchasers, and judgment creditors.

(a) *Invalidity of lien without notice*—(1) *Filing of notice.* The lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice of lien has been filed. (See, however, section 6323 (c) and paragraph (b) of this section, relating to the circumstances under which the lien is not valid with respect to a security even though notice thereof is duly filed.) The place for the filing of the notice of lien is:

(i) The office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has designated an office within the State or Territory for the filing of such notice;

(ii) The office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(iii) The office of the clerk of the United States District Court for the District of Columbia if the property subject to the lien is situated in the District of Columbia.

(2) *Meaning of terms.* (i) As used in section 6323 and this section:

(*a*) The term "purchaser" means a person who, for a valuable present consideration, acquires property or an interest in property.

(*b*) The term "judgment creditor" means a person who has obtained a valid judgment in a court of record and of competent jurisdiction for the recovery of specifically designated property or for a certain sum of money and, in the case of a judgment for the recovery of a certain sum of money, who has a perfected lien under such judgment on the property involved. The term "judgment" does not include an inchoate lien, such as an attachment lien, unless and until such lien has ripened into a judgment. United States v. Security Trust and Savings Bank (1950) 340 U. S. 47. Nor does the term "judgment" include the determination of a quasi-judicial body or of an individual acting in a quasi-judicial capacity, such as, for example, the action of State taxing authorities. United States v. Gilbert Associates (1953) 345 U.S. 361; and United States v. City of New Britain (1954) 347 U.S. 81.

(ii) The determination whether a person is a mortgagee, pledgee, purchaser, or judgment creditor, entitled to the protection of section 6323 (a), shall be made by reference to the realities and the facts in a given case rather than to the technical form or terminology used to designate such person. Thus, a person who is in fact and in law a mortgagee, pledgee, or purchaser will be entitled as such to the protection of section 6323 (a) even though such person is otherwise designated under the law of a State, such as the Uniform Commercial Code.

(3) *Form of notice.* The form to be used for filing the notice of lien shall be Form 668, "Notice of Federal Tax Lien under Internal Revenue Laws". Such notice, filed in the office designated by the law of a State or Territory, shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien. For example, the omission from the notice of lien of a description of the property subject to the lien will not affect the validity thereof, even though the law of the State or Territory requires that the notice of lien contain a description of the property subject to the lien.

(b) *Exception in case of securities*—(1) *Exception.* Even though a notice of lien provided for in section 6321 has been filed in the manner prescribed in section 6323 (a), the lien shall not be valid with respect to a security, as defined in section 6323 (c) (2), as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien. An adequate and full consideration in money or money's worth, as used in section 6323 (c), means that the consideration must have been an adequate and full equivalent reducible to a money value. A purchase of property made in the ordinary course of business (that is, a transaction which is bona fide and made at arm's length) will be considered as made for an adequate and full consideration in money or money's worth. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other

marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

(2) *Definition of security.* As used in section 6323 (c), the term "security" means: Any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(c) *Disclosure of amount of outstanding lien.* (1) If a notice of lien has been filed, the district director to whom the assessment which gave rise to the lien is charged is authorized to disclose information as to the amount of the outstanding obligation secured by the lien to any person who has a proper interest in determining the amount of the outstanding obligation. Any person desiring such information should present to the district director a written request. Such request should clearly describe the property subject to the lien, identify the applicable lien, and give the reasons for requesting such information. Any person who has a right in the property or intends to obtain a right in the property by purchase or otherwise will, upon satisfactory proof of such right or of the intention to obtain such right, be considered to have a proper interest.

(2) If the district director determines that the applicant is entitled to the information requested, he will disclose to such applicant the total amount of the outstanding obligation secured by the lien.

(3) The Commissioner may disclose the amount of any outstanding obligation secured by the lien if he determines such action is warranted under the facts and circumstances in the particular case.

(4) The provisions of this paragraph apply to any notice of lien filed under section 6323 or corresponding provisions of prior internal revenue laws.

(d) *Application of section 6323 to liens imposed under section 3670 of the Internal Revenue Code of 1939.* In the case of any lien arising under section 3670 of the Internal Revenue Code of 1939 or the corresponding provisions of prior law (relating to the general tax lien) which is in effect on January 1, 1955, the provisions of section 6323 shall be applicable to such lien on and after such date in lieu of the provisions of section 3672 of the Internal Revenue Code of 1939 or the corresponding provisions of prior law.

§ 301.6324 Statutory provisions; special liens for estate and gift taxes.

SEC. 6324. *Special liens for estate and gift taxes*—(a) *Liens for estate tax.* Except as otherwise provided in subsection (c) (relating to transfers of securities)—

(1) *Upon gross estate.* Unless the estate tax imposed by chapter 11 is sooner paid in full, it shall be a lien for 10 years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

(2) *Liability of transferees and others.* If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employee's trust which meets the requirements of section 401 (a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except any part transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth.

(3) *Continuance after discharge of executor.* The provisions of section 2204 (relating to discharge of executor from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money, or money's worth, in which case such part (or such interest) shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser, mortgagee, or pledgee by the heirs, legatees, devisees, or distributees.

(b) *Lien for gift tax.* Except as otherwise provided in subsection (c) (relating to transfers of securities), the gift tax imposed by chapter 12 shall be a lien upon all gifts made during the calendar year, for 10 years from the time the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth shall be divested of the lien herein imposed and the lien, to the extent of the value of such gift, shall attach to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth.

(c) *Exception in case of securities.* The lien imposed by subsection (a) or (b) shall not be valid with respect to a security, as defined in section 6323 (c) (2), as against any mortgagee, pledgee, or purchaser of any such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

§ 301.6324–1 Special liens for estate and gift taxes; personal liability of transferees and others.

(a) *Estate tax.* (1) The lien imposed by section 6324 (a) attaches at the date of the decedent's death to every part of the gross estate, whether or not the property comes into the possession of the duly qualified executor or administrator. It attaches to the extent of the tax shown to be due by the return and of any deficiency in tax found to be due upon review and audit. If the estate tax is not paid when due, then the spouse, transferee, trustee (except the trustee of an employee's trust which meets the requirements of section 401 (a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, shall be personally liable for such tax to the extent of the value, at the time of the decedent's death, of such property.

(2) Unless the tax is paid in full, and except as otherwise provided in section 6324 (c) (relating to transfers of securities), the lien upon the entire property constituting the gross estate continues for a period of 10 years after the decedent's death, except that such lien shall be divested with respect to:

(i) Such portion of the gross estate as is used for the payment of charges against the estate and expenses of its administration allowed by any court having jurisdiction thereof;

(ii) Such property as is transferred to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth, by the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive (or the corresponding provisions of the Internal Revenue Code of 1939), or such property as is transferred by the transferee of such person. In such case, a like lien attaches to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except such part thereof as may be transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth. See paragraph (b) (1) of § 301.6323–1 for the meaning of the term "an adequate and full consideration in money or money's worth";

(iii) Such portion of the gross estate (or any interest therein) as has been transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth, if payment is made of the full amount of tax determined by the district director pursuant to a request of the executor for discharge from personal liability as authorized by section 2204 (relating to discharge of executor from personal liability), but there is substituted a like lien upon the consideration

received from such purchaser, mortgagee, or pledgee by the heirs, legatees, devisees, or distributees; and

(iv) Such property as to which the district director has issued a certificate releasing the lien pursuant to section 6325.

(b) *Lien for gift tax.* Except as provided in section 6324 (c) (relating to securities), a lien attaches upon all gifts made during the calendar year for the amount of the tax imposed upon the gifts made during such year. The lien extends for a period of 10 years from the time the gifts were made, unless the tax is sooner paid. If the tax is not paid when due, the donee of any gift becomes personally liable for the tax to the extent of the value of his gift. Any part of the property comprised in the gift which is transferred by the donee (or by a transferee of the donee) to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth, is divested of the lien, but a like lien to the extent of the value of such gift attaches to all the property (including after-acquired property) of the donee (or the transferee), except any part transferred to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth. See paragraph (b) (1) of § 301.6323–1 for the meaning of the term "an adequate and full consideration in money or money's worth".

(c) *Application of lien imposed by section 6321.* The general lien under section 6321 and the special lien under subsection (a) or (b) of section 6324 for the estate or gift tax are not exclusive of each other, but are cumulative. Each lien will arise when the conditions precedent to the creation of such lien are met and will continue in accordance with the provisions applicable to the particular lien. Thus, the special lien may exist without the general lien being in force, or the general lien may exist without the special lien being in force, or the general lien and the special lien may exist simultaneously, depending upon the facts and pertinent statutory provisions applicable to the respective liens.

(d) *Application of section 6324 to estate and gift tax liens imposed under the Internal Revenue Code of 1939.* In the case of any lien arising under section 827 or 1009 of the Internal Revenue Code of 1939 (relating to liens for estate and gift taxes, respectively) which is in effect on January 1, 1955, the provisions of section 6324 shall be applicable to such lien on and after such date in lieu of the provisions of section 827 or 1009 of the 1939 Code.

§ 301.6325 Statutory provisions; release of lien or partial discharge of property.

SEC. 6325. *Release of lien or partial discharge of property*—(a) *Release of lien.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

(1) *Liability satisfied or unenforceable.* The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable; or

(2) *Bond accepted.* There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such rules or regulations.

(b) *Partial discharge of property*—(1) *Property double the amount of the liability.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority to such lien.

(2) *Part payment or interest of United States valueless.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

(A) there is paid over to the Secretary or his delegate in part satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged, or

(B) the Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the fair market value of such part and to such liens thereon as have priority to the lien of the United States.

(c) *Estate or gift tax.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any or all of the property subject to any lien imposed by section 6324 if the Secretary or his delegate finds that the liability secured by such lien has been fully satisfied or provided for.

(d) *Effect of certificate of release or discharge.* A certificate of release or of discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

(e) *Cross references.* (1) For single bond complying with the requirements of both subsection (a)(2) and section 6165, see section 7102.

(2) For other provisions relating to bonds, see generally chapter 73.

(3) For provisions relating to suits to enforce lien, see section 7403.

(4) For provisions relating to suits to clear title to realty, see section 7424.

[Sec. 6325 as amended by sec. 77, Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.6325–1 Release of lien or partial discharge of property.

(a) *Release of lien*—(1) *Liability satisfied or unenforceable.* The district director to whom is charged an assessment in respect of any internal revenue tax shall issue a certificate of release of any lien imposed with respect to such tax, whenever he finds that the liability for the amount assessed (together with all interest in respect thereof) has been satisfied or has become unenforceable as a matter of law (and not merely uncollectible or unenforceable as a matter of fact). Tax liabilities frequently are unenforceable in fact for the time being, due to the temporary nonpossession by the taxpayer of discoverable property or property rights. In all cases the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such extension of the period for collection as may be agreed upon in writing by the taxpayer and the district director. The form to be used by the district director is Form 669, "Certificate of Release of Federal Tax Lien".

(2) *Bond accepted.* The district director may, in his discretion, issue a certificate of release of any tax lien if he is furnished and accepts a bond that is conditioned upon the payment of the amount assessed (together with all interest in respect thereof), within the time agreed upon in the bond, but not later than 6 months before the expiration of the statutory period for collection, including any period for collection agreed upon in writing by the district director and the taxpayer. For provisions relating to bonds, see sections 7101 and 7102 and §§ 301.7101–1 and 301.7102–1.

(b) *Discharge of specific property from the lien*—(1) *Property double the amount of the liability.* (i) The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to any tax lien if he determines that the fair market value of that part of the property remaining subject to the lien is at least double the sum of the amount of the unsatisfied liability secured by such lien and of the amount of all other liens upon such property which have priority to such lien. In general, fair market value is that amount which one ready and willing but not compelled to buy would pay to another ready and willing but not compelled to sell the property. The form to be used by the district director is Form 669–A, "Certificate of Discharge of Property from Federal Tax Lien". For information required to be submitted in an application for a certificate of discharge, see subparagraph (4) of this paragraph.

(ii) The following example illustrates a case in which a certificate of discharge may not be given under this subparagraph:

Example. The Federal tax liability secured by a lien is $1,000. The fair market value of all property which after the discharge will continue to be subject to the Federal tax lien is $10,000. There is a prior mortgage on the property of $5,000, including interest, and the property is subject to a prior lien of $100 for real estate taxes. Accordingly, the taxpayer's equity in the property over and above the amount of the mortgage and real estate taxes is $4,900, or nearly five times the amount required to pay the assessed tax on which the Federal tax lien is based. Nevertheless, a discharge under this subparagraph is not permissible. In the illustration, the sum of the amount of the Federal tax liability ($1,000) and of the amount of the prior mortgage and the lien

for real estate taxes ($5,000+$100=$5,100) is $6,100. Double this sum is $12,200, but the fair market value of the remaining property is only $10,000. Hence, a discharge of the property is not permissible under this subparagraph, since the Code requires that the fair market value of the remaining property be at least double the sum of two amounts, one amount being the outstanding Federal tax liability and the other amount being all prior liens upon such property. In order that the discharge may be issued, it would be necessary that the remaining property be worth not less than $12,200.

(2) *Part payment.* The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to the lien if there is paid over to him in part satisfaction of the liability secured by the lien an amount determined by him to be not less than the value of the interest of the United States in the property to be so discharged. In determining the amount to be paid, the district director will take into consideration all the facts and circumstances of the case, including the expenses to which the Government has been put in the matter. In no case shall the amount to be paid be less than the value of the interest of the United States in the property with respect to which the certificate of discharge is to be issued, as such value has been determined by the district director in the light of the fair market value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien. The form to be used by the district director is Form 669–B, "Certificate of Discharge of Property from Federal Tax Lien". For information required to be submitted in an application for a certificate of discharge, see subparagraph (4) of this paragraph.

(3) *Interest of the United States valueless.* The district director may, in his discretion, issue a certificate of discharge of any part of the property subject to the lien if he determines that the interest of the United States in the property to be so discharged has no value. The form to be used by the district director is Form 669–C, "Certificate of Discharge of Property from Federal Tax Lien". For information required to be submitted in an application for a certificate of discharge, see subparagraph (4) of this paragraph.

(4) *Application for certificate of discharge.* Any person desiring a certificate of discharge of property from a Federal tax lien shall submit to the district director to whom the assessment is charged a written application in triplicate, under penalties of perjury, requesting that the certificate be issued. The application shall contain the following information:

(i) A clear description of the property with respect to which the discharge is desired and, where applicable, of the property remaining subject to the lien;

(ii) The reason the discharge is sought;

(iii) A description of the Federal tax lien in respect of which the certificate of discharge is sought, including the amount, nature of the tax, the dates of assessment, and, if applicable, an appropriate reference to the registry and the page and volume of the book in which the notice of Federal tax lien is filed, indexed, or recorded, and the date of the filing of the notice;

(iv) A statement in numbered paragraphs of all facts material to the application, including the amount, character, and dates (both of execution and of record) of all encumbrances of record prior to the Federal lien, with an appropriate reference to the registry and the page and volume of the book in which each such encumbrance is recorded;

(v) The amounts, character, and dates of execution of any unrecorded encumbrances believed to be prior to the Federal tax lien, including information as to how and when such encumbrances arose;

(vi) In support of the application, the applicant must furnish proof sufficient to establish the fair market value of the property with respect to which the discharge is sought, and, where applicable, proof sufficient to establish the fair market value of the property which will remain subject to the lien; and

(viii) Any other information which in the opinion of the applicant might have a bearing upon the determination to be made.

Applications submitted under subparagraph (1) or (3) of this paragraph do not require the submission of any sum of money for the discharge of the property from a tax lien. Since the amount to be paid for the issuance, under subparagraph (2) of this paragraph, of a certificate of discharge of property from a Federal tax lien is a matter for the determination of the district director after consideration of the facts and law involved, no sum of money or check should be submitted with the application. The district director shall cause a thorough investigation to be made as to the proof and accuracy of all material statements made in the application. Upon completion of such investigation the district director will make his determination and advise the applicant of the decision reached.

(c) *Estate or gift tax liability fully satisfied or provided for*—(1) *Certificate of discharge.* If the district director determines that the tax liability for estate or gift tax has been fully satisfied, he may issue a certificate of discharge of any or all property from the lien imposed thereon. If the district director determines that the tax liability for estate or gift tax has been adequately provided for, he may issue a certificate discharging particular items of property from the lien. The issuance of such a certificate is a matter resting within the discretion of the district director, and a certificate will be issued only in case there is actual need therefor. The primary purpose of such discharge is not to evidence payment or satisfaction of the tax, but to permit the transfer of property free from the lien in case it is necessary to clear title. The tax will be considered fully satisfied only when investigation has been completed and payment of the tax, including any deficiency determined, has been made.

(2) *Application for certificate of discharge.* An application for a certificate of discharge of property from the lien for estate or gift tax should be filed with the district director charged with the assessment in respect of the tax. It should be made in writing under penalties of perjury and should explain the circumstances that require the discharge, and should fully describe the particular items for which the discharge is desired. In the case of an estate tax lien, the application should show the applicant's relationship to the estate, such as executor, heir, devisee, legatee, beneficiary, transferee, or purchaser. If the estate or gift tax return has not been filed, a statement under penalties of perjury may be required showing (i) the value of the property to be discharged, (ii) the basis for such valuation, (iii) in the case of the estate tax, the approximate value of the gross estate and the approximate value of the total real property included in the gross estate, (iv) in the case of the gift tax, the total amount of gifts made during the calendar year and the prior calendar years subsequent to the enactment of the Revenue Act of 1932 and the approximate value of all real estate subject to the gift tax lien, and (v) if the property is to be sold or otherwise transferred, the name and address of the purchaser or transferee and the consideration, if any, paid or to be paid by him.

(3) For provisions relating to transfer certificates in the case of nonresident estates, see § 20.6325–1 of this chapter (Estate Tax Regulations).

(d) *Effect of certificate of release or discharge of specific property.* A certificate of release of lien or a certificate discharging specific property from the lien issued under section 6325 shall be conclusive that the lien upon the property covered by the certificate is extinguished.

§ 301.6326 Statutory provisions; cross references.

SEC. 6326. *Cross references.* (1) For lien in case of tax on distilled spirits, see section 5004.

(2) For exclusion of tax liability from discharge in bankruptcy, see section 17 of the Bankruptcy Act, as amended (52 Stat. 851; 11 U. S. C. 35).

(3) For limit on amount allowed in bankruptcy proceedings on debts owing to the United States, see section 57 (j) of the Bankruptcy Act, as amended (52 Stat. 867; 11 U. S. C. 93).

(4) For recognition of tax liens in proceedings under the Bankruptcy Act, see section 67 (b) and (c) of that act, as amended (52 Stat. 876–877; 11 U. S. C. 107).

(5) For collection of taxes in connection with wage earners' plans in bankruptcy courts, see section 680 of the Bankruptcy Act, as added by the act of June 22, 1938 (52 Stat. 938; 11 U. S. C. 1080).

(6) For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have a claim upon the premises involved, see section 2410 of Title 28 of the United States Code.

(7) For priority of lien of the United States in case of insolvency, see R. S. 3466 (31 U. S. C. 191).

SEIZURE OF PROPERTY FOR COLLECTION OF TAXES

§ 301.6331 Statutory provisions; levy and distraint.

SEC. 6331. *Levy and distraint*—(a) *Authority of Secretary or delegate.* If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary

or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401 (d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) *Seizure and sale of property.* The term "levy" as used in this title includes the power of distraint and seizure by any means. In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

(c) *Successive seizures.* Whenever any property or right to property upon which levy has been made by virtue of subsection (a) is not sufficient to satisfy the claim of the United States for which levy is made, the Secretary or his delegate may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(d) *Cross references.* (1) For provisions relating to jeopardy, see subchapter A of chapter 70.

(2) For proceedings applicable to sale of seized property, see section 6335.

§ 301.6331–1 Levy and distraint.

(a) *Authority to levy*—(1) *In general.* If any person liable to pay any tax neglects or refuses to pay such tax within 10 days after notice and demand, the district director to whom the assessment is charged or, upon his request, any other district director may proceed to collect the tax by levy upon any property, or rights to property, whether real or personal, tangible or intangible, belonging to such person or on which there is a lien provided by section 6321 or 6324 (or the corresponding provision of prior law) for the payment of such tax. As used in section 6331 and this section, the term "tax" includes any interest, additional amount, addition to tax, or assessable penalty, together with any costs and expenses that may accrue in addition thereto. For exemption of certain property from levy, see section 6334 and the regulations thereunder. Property subject to a Federal tax lien, which has been sold or otherwise transferred by the taxpayer, may be seized in the hands of the transferee or of any subsequent transferee. Levy may be made by serving a notice of levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy, such as, for example, receivables, bank accounts, evidences of debt, securities, and accrued salaries, wages, commissions, and other compensation.

(2) *Jeopardy cases.* If the district director finds that the collection of any tax is in jeopardy, he may make notice and demand for immediate payment of such tax and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in section 6331 (a).

(3) *Bankruptcy or receivership cases.* During a bankruptcy proceeding or a receivership proceeding in either a Federal or a State court, the assets of the taxpayer are in general under the control of the court in which such proceeding is pending. Taxes cannot be collected by levy upon assets in the custody of a court, whether or not such custody is incident to a bankruptcy or receivership proceeding, except where the proceeding has progressed to such a point that the levy would not interfere with the work of the court or where the court grants permission to levy. Any assets which under applicable provisions of law are not under the control of the court may be levied upon, for example, property exempt from court custody under State law or the bankrupt's earnings and property acquired after the date of bankruptcy. However, levy upon such property is not mandatory and the Government may rely upon payment of taxes in the proceeding.

(4) *Certain types of compensation*—(i) *Federal employees.* Levy may be made upon the accrued salary or wages of any officer or employee (including members of the Armed Forces), or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, by serving a notice of levy on the employer of the delinquent taxpayer. As used in this subdivision, the term "employer" means (*a*) the officer or employee of the United States, the District of Columbia, or of the agency or instrumentality of the United States or the District of Columbia, who has control of the payment of the wages, or (*b*) any other officer or employee designated by the head of the branch, department, agency, or instrumentality of the United States or of the District of Columbia as the party upon whom service of the notice of levy may be made. If the head of such branch, department, agency, or instrumentality designates an officer or employee other than one who has control of the payment of the wages, as the party upon whom service of the notice of levy may be made, such head shall promptly notify the Commissioner of the name and address of each officer or employee so designated and the scope or extent of his authority as such designee.

(ii) *State and municipal employees.* Accrued salaries, wages, or other compensation of any officer, employee, or elected or appointed official of a State or Territory, or of any agency, instrumentality, or political subdivision thereof, are also subject to levy to enforce collection of any Federal tax.

(iii) *Seamen.* Notwithstanding the provisions of section 12 of the Seamen's Act of 1915 (46 U.S.C. 601), accrued wages of seamen, apprentice seamen, or fishermen employed on fishing vessels are subject to levy. See section 6334(c).

(b) *Successive seizures.* Whenever any property or rights to property upon which a levy has been made are not sufficient to satisfy the claim of the United States for which the levy is made, the district director may thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property or rights to property subject to levy of the person against whom such claim exists or on which there is a lien imposed by section 6321 or 6324 (or the corresponding provision of prior law) for the payment of such claim until the amount due from such person, together with all costs and expenses, is fully paid.

§ 301.6332 Statutory provisions; surrender of property subject to levy.

SEC. 6332. *Surrender of property subject to levy*—(a) *Requirement.* Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the district director, surrender such property or rights (or discharge such obligation) to the district director, except such part of the property or right as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) *Penalty for violation.* Any person who fails or refuses, upon demand of the district director, to surrender any property or rights to property subject to levy, as required by section 6332 (a), shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy.

(c) *Person defined.* The term "person," as used in section 6332 (a) and this section, includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary or his delegate, surrender such property or rights (or discharge such obligation) to the Secretary or his delegate, except such part of the property or rights as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) *Penalty for violation.* Any person who fails or refuses to surrender as required by subsection (a) any property or rights to property, subject to levy, upon demand by the Secretary or his delegate, shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy.

(c) *Person defined.* The term "person," as used in subsection (a), includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

§ 301.6332–1 Surrender of property subject to levy.

(a) *Requirement.* Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made shall, upon demand of the district director, surrender such property or rights (or discharge such obligation) to the district director, except such part of the property or right as is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) *Penalty for violation.* Any person who fails or refuses, upon demand of the district director, to surrender any property or rights to property subject to levy, as required by section 6332 (a), shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate of 6 percent per annum from the date of such levy.

(c) *Person defined.* The term "person," as used in section 6332 (a) and this section, includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to surrender the property or rights

to property or to discharge the obligation. Thus, in the case of a levy upon the salary or wages of an officer, employee, or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, the term "person" includes the officer or employee of the United States, of the District of Columbia, or of such agency or instrumentality, who as such officer or employee is under a duty to discharge the obligation. As to the officer or employee who is under such duty, see paragraph (a)(4)(i) of § 301.6331–1.

§ 301.6333 Statutory provisions; production of books.

SEC. 6333. *Production of books.* If a levy has been made or is about to be made on any property, or right to property, any person having custody or control of any books or records, containing evidence or statements relating to the property or right to property subject to levy, shall, upon demand of the Secretary or his delegate, exhibit such books or records to the Secretary or his delegate.

§ 301.6333–1 Production of books.

If a levy has been made or is about to be made on any property or rights to property, any person, having custody or control of any books or records containing evidence or statements relating to the property or rights to property subject to levy, shall, upon demand of the internal revenue officer who has made or is about to make the levy, exhibit such books or records to such officer.

§ 301.6334 Statutory provisions; property exempt from levy.

SEC. 6334. *Property exempt from levy*—(a) *Enumeration.* There shall be exempt from levy—

(1) *Wearing apparel and school books.* Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) *Fuel, provisions, furniture, and personal effects.* If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $500 in value;

(3) *Books and tools of a trade, business, or profession.* So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate $250 in value.

(4) *Unemployment benefits.* Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State or Territory, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(b) *Appraisal.* The officer seizing property of the type described in subsection (a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, the Secretary or his delegate shall summon three disinterested individuals who shall make the valuation.

(c) *No other property exempt.* Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

[Sec. 6334 as amended by sec. 406, Social Security Amendments 1958 (72 Stat. 1047)]

SEC. 12 [Railroad Retirement Act of 1937, as amended]. Notwithstanding any other law of the United States, or of any State, Territory, or of the District of Columbia, no annuity or pension payment shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.

[Sec. 12 as amended by sec. 4, Act of Aug. 12, 1955 (Pub. Law 383, 84th Cong., 69 Stat. 716), effective as of Aug. 29, 1935 (45 U.S.C. 228l)]

SEC. 2 [Railroad Unemployment Insurance Act]. * * *

(e) Notwithstanding any other law of the United States, or of any State, Territory, or the District of Columbia, no benefits shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.

[Sec. 2 as amended by sec. 4, Act of Aug. 12, 1955 (Pub. Law 383, 84th Cong., 69 Stat. 716), effective as of June 25, 1938 (45 U.S.C. 352(e))]

SEC. 562 [Title 38, United States Code]. *Special provisions relating to pension.* * * *

(c) Special pension shall not be subject to any attachment, execution, levy, tax lien, or detention under any process whatever.

[38 U.S.C. 562(c), enacted into positive law by Act of Sept. 2, 1958 (Pub. Law 85–857, 72 Stat. 1105)]

SEC. 1440 [Title 10, United States Code]. *Annuities not subject to legal process.* No annuity payable under this chapter (Chapter 73) is assignable or subject to execution, levy, attachment, garnishment, or other legal process.

[10 U.S.C. 1440, enacted into positive law by Act of Aug. 10, 1956 (Pub. Law 1028, 84th Cong., 70A Stat. 111)]

§ 301.6334–1 Property exempt from levy.

(a) *Enumeration.* There shall be exempt from levy—

(1) *Wearing apparel and school books.* Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family. Expensive items of wearing apparel, such as furs, which are luxuries and are not necessary for the taxpayer or for members of his family, are not exempt from levy.

(2) *Fuel, provisions, furniture, and personal effects.* If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $500 in value.

(3) *Books and tools of a trade, business, or profession.* So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate $250 in value.

(4) *Unemployment benefits.* Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State or Territory, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(b) *Appraisal.* The internal revenue officer seizing property of the type described in section 6334 (a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, such officer shall summon three disinterested individuals who shall make the valuation.

(c) *Other property.* Annuity or pension payments under the Railroad Retirement Act (45 U.S.C. ch. 9), benefits under the Railroad Unemployment Insurance Act (45 U.S.C. ch. 11), special pensions under 38 U.S.C. 562, and annuities payable under 10 U.S.C. ch. 73 are exempt from levy. No other property or rights to property are exempt from levy except the property specifically exempted by section 6334(a). No provision of a State law may exempt property or rights to property from levy for the collection of any Federal tax. Thus, property exempt from execution under State personal or homestead exemption laws is, nevertheless, subject to levy by the United States for collection of its taxes.

§ 301.6335 Statutory provisions; sale of seized property.

SEC. 6335. *Sale of seized property*—(a) *Notice of seizure.* As soon as practicable after seizure of property, notice in writing shall be given by the Secretary or his delegate to the owner of the property (or, in the case of personal property, the possessor thereof), or shall be left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) *Notice of sale.* The Secretary or his delegate shall as soon as practicable after the seizure of the property give notice to the owner, in the same manner as that prescribed in subsection (a), and shall cause a notification to be published in some newspaper within the county wherein such seizure is made, or, if there be no newspaper published in such county, shall post such notice at the post office nearest the place where the seizure is made, and in not less than two other public places. Such notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof. Whenever levy is made without regard to the 10-day period provided in section 6331 (a), public notice of sale of the property seized shall not be made within such 10-day period unless section 6336 (relating to sale of perishable goods) is applicable.

(c) *Sale of indivisible property.* If any property liable to levy is not divisible, so as to enable the Secretary or his delegate by sale of a part thereof to raise the whole amount of the tax and expenses, the whole of such property shall be sold.

(d) *Time and place of sale.* The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice under subsection (b). The place of sale shall be within the county in which the property is seized, except by special order of the Secretary or his delegate.

(e) *Manner and conditions of sale*—(1) *Minimum price.* Before the sale the Secretary or his delegate shall determine a minimum price for which the property shall be sold, and if no person offers for such property at the sale the amount of the minimum price, the property shall be de-

cared to be purchased at such price for the United States; otherwise the property shall be declared to be sold to the highest bidder. In determining the minimum price, the Secretary or his delegate shall take into account the expense of making the levy and sale.

(2) *Additional rules applicable to sale.* The Secretary or his delegate shall by regulations prescribe the manner and other conditions of the sale of property seized by levy. If one or more alternative methods or conditions are permitted by regulations, the Secretary or his delegate shall select the alternatives applicable to the sale. Such regulations shall provide:

(A) That the sale shall not be conducted in any manner other than—

(i) by public auction, or

(ii) by public sale under sealed bids.

(B) In the case of the seizure of several items of property, whether such items shall be offered separately, in groups, or in the aggregate; and whether such property shall be offered both separately (or in groups) and in the aggregate, and sold under whichever method produces the highest aggregate amount.

(C) Whether the announcement of the minimum price determined by the Secretary or his delegate may be delayed until the receipt of the highest bid.

(D) Whether payment in full shall be required at the time of acceptance of a bid, or whether a part of such payment may be deferred for such period (not to exceed 1 month) as may be determined by the Secretary or his delegate to be appropriate.

(E) The extent to which methods (including advertising) in addition to those prescribed in subsection (b) may be used in giving notice of the sale.

(F) Under what circumstances the Secretary or his delegate may adjourn the sale from time to time (but such adjournments shall not be for a period to exceed in all 1 month).

(3) *Payment of amount bid.* If payment in full is required at the time of acceptance of a bid and is not then and there paid, the Secretary or his delegate shall forthwith proceed to again sell the property in the manner provided in this subsection. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of 6 percent per annum from the date of the sale; or, in the discretion of the Secretary or his delegate, the sale may be declared by the Secretary or his delegate to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in subsections (b) and (c) and this subsection. In the event of such readvertisement and sale any new purchaser shall receive such property or rights to property, free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited.

(*f*) *Stay of sale of seized property pending Tax Court decision.* For restrictions on sale of seized property pending Tax Court decision, see section 6863 (b) (3).

§ 301.6335–1 Sale of seized property.

(a) *Notice of seizure.* As soon as practicable after seizure of property, the internal revenue officer seizing the property shall give notice in writing to the owner of the property (or, in the case of personal property, to the possessor thereof). The written notice shall be delivered to the owner (or to the possessor, in the case of personal property), or left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, a list sufficient to identify the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) *Notice of sale.* (1) As soon as practicable after seizure of the property, the district director shall give notice of sale in writing to the owner. Such notice shall be delivered to the owner or left at his usual place of abode or business if he has such within the internal revenue district where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such district, the notice may be mailed to his last known address. The notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof, and shall expressly state that only the right, title, and interest of the delinquent taxpayer in and to such property is to be offered for sale. The notice shall also be published in some newspaper within the county wherein such seizure is made. However, if there is no newspaper published in such county, such notice shall be posted at the post office nearest the place where the seizure is made, and in not less than two other public places.

(2) The district director may use other methods of giving notice of sale and of advertising seized property in addition to those referred to in subparagraph (1) of this paragraph when he believes that the nature of the property to be sold is such that a wider or more specialized advertising coverage will enhance the possibility of obtaining a higher price for the property.

(3) Whenever levy is made without regard to the 10-day period provided in section 6331 (a) (relating to cases in which collection is in jeopardy), a public notice of sale of the property seized shall not be made within such 10-day period unless section 6336 (relating to perishable goods) is applicable.

(c) *Time, place, manner, and conditions of sale.* The time, place, manner, and conditions of the sale of property seized by levy shall be as follows:

(1) *Time and place of sale.* The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice under section 6335 (b) (see paragraph (b) of this section). The place of sale shall be within the county in which the property is seized, except that if it appears to the district director under whose supervision the seizure was made that substantially higher bids may be obtained for the property if the sale is held at a place outside such county, he may order that the sale be held in such other place. The sale shall be held at the time and place stated in the notice of sale.

(2) *Adjournment of sale.* When it appears to the district director that an adjournment of the sale will best serve the interest of the United States or that of the taxpayer, the district director may adjourn, or cause the internal revenue officer conducting the sale to adjourn, the sale from time to time, but the date of the sale shall not be later than one month after the date fixed in the original notice of sale.

(3) *Minimum price.* The district director shall determine a minimum price, taking into account the expenses of levy and sale, for which the property shall be sold. If no person offers for such property at the sale the amount of the minimum price, the property shall be declared purchased at such price for the United States; otherwise, the property shall be declared to be sold to the highest bidder. The internal revenue officer conducting the sale shall either announce the minimum price before the sale begins or defer announcement of the minimum price until after the receipt of the highest bid, and, if the highest bid is greater than the minimum price, no announcement of the minimum price shall be made.

(4) *Offering of property*—(i) *Sale of indivisible property.* If any property levied upon is not divisible, so as to enable the district director by sale of a part thereof to raise the whole amount of the tax and expenses of levy and sale, the whole of such property shall be sold. For application of surplus proceeds of sale, see section 6342 (b).

(ii) *Separately, in groups, or in the aggregate.* The seized property may be offered for sale—

(*a*) As separate items, or

(*b*) As groups of items, or

(*c*) In the aggregate, or

(*d*) Both as separate items (or in groups) and in the aggregate. In such cases, the property shall be sold under the method which produces the highest aggregate amount.

The district director shall select whichever of the foregoing methods of offering the property for sale as, in his opinion, is most feasible under all the facts and circumstances of the case, except that if the property to be sold includes both real and personal property, only the personal property may be grouped for the purpose of offering such property for sale. However, real and personal property may be offered for sale in the aggregate, provided the real property, as separate items, and the personal property as a group, or as groups, or as separate items, are first offered separately.

(iii) *Condition of title and of property.* Only the right, title, and interest of the delinquent taxpayer in and to the property seized shall be offered for sale, and such interest shall be offered subject to any prior outstanding mortgages, encumbrances, or other liens in favor of third parties which are valid as against the delinquent taxpayer and are superior to the lien of the United States. All seized property shall be offered for sale "as is" and "where is" and without recourse against the United States. No guaranty or warranty, express or implied, shall be made by the internal revenue officer offering the property for sale, as to the validity of the title, quality, quantity, weight, size, or condition of any

of the property, or its fitness for any use or purpose. No claim shall be considered for allowance or adjustment or for rescission of the sale based upon failure of the property to conform with any representation, express or implied.

(iv) *Terms of payment.* The property shall be offered for sale upon whichever of the following terms is fixed by the district director in the public notice of sale:

(*a*) Payment in full upon acceptance of the highest bid, without regard to the amount of such bid, or

(*b*) If the aggregate price of all property purchased by a successful bidder at the sale is more than $200, an initial payment of $200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed one month from the date of the sale.

(5) *Method of sale.* The district director shall sell the property either—

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids. The following rules, in addition to the other rules provided in this paragraph, shall be applicable to public sale under sealed bids:

(*a*) *Invitation to bidders.* Bids shall be solicited through a public notice of sale.

(*b*) *Form for use by bidders.* A bid shall be submitted on a form which will be furnished by the district director upon request. The form shall be completed in accordance with the instructions thereon.

(*c*) *Remittance with bid.* If the total bid is $200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than $200, 20 percent of such bid or $200, whichever is greater, shall be submitted therewith. (In the case of alternative bids submitted by the same bidder for items of property offered separately, or in groups, or in the aggregate, the bidder shall remit the full amount of the highest alternative bid submitted, if that bid is $200 or less. If the highest alternative bid submitted is more than $200, the bidder shall remit 20 percent of the highest alternative bid or $200, whichever is greater.) Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order.

(*d*) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope his name and address and the time and place of sale as announced in the public notice of sale. A bid will not be considered unless it is received by the internal revenue officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(*e*) *Consideration of bids.* The public notice of sale shall specify whether the property is to be sold separately, by groups, or in the aggregate or by a combination of these methods, as provided in subparagraph (4) (ii) of this paragraph. If the notice specifies an alternative method, bidders may submit bids under one or more of the alternatives. In case of error in the extension of prices in any bid, the unit price will govern. The internal revenue officer conducting the sale shall have the right to waive any technical defects in a bid. In the event two or more highest bids are equal in amount, the internal revenue officer conducting the sale shall determine the successful bidder by drawing lots. After the opening, examination, and consideration of all bids, the internal revenue officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders. Any remittance submitted in connection with an unsuccessful bid shall be returned at the conclusion of the sale.

(*f*) *Withdrawal of bids.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of his bid after it has been opened.

(6) *Payment of bid price.* All payments for property sold under this section shall be made by cash or by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(7) *Delivery and removal of personal property.* Responsibility of the United States for the protection or preservation of seized personal property shall cease immediately upon acceptance of the highest bid. The risk of loss is on the purchaser of personal property upon acceptance of his bid. Possession of any personal property shall not be delivered to the purchaser until the purchase price has been paid in full. If payment of part of the purchase price for personal property is deferred, the United States will retain possession of such property as security for the payment of the balance of the purchase price and, as agent for the purchaser, will cause the property to be cared for until the purchase price has been paid in full or the sale is declared null and void for failure to make full payment of the purchase price. In such case, all charges and expenses incurred in caring for the property after the acceptance of the bid shall be borne by the purchaser.

(8) *Default in payment.* If payment in full is required upon acceptance of the bid and is not then and there paid, the internal revenue officer conducting the sale shall forthwith proceed again to sell the property in the manner provided in section 6335(e) and this section. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of 6 percent per annum from the date of the sale; or, in the discretion of the district director, the sale may be declared by the district director to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in subsections (b), (c), and (e) of section 6335 and this section. In the event of such readvertisement and sale, any new purchaser shall receive such property or rights to property free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited to the United States.

(9) *Stay of sale of seized property pending Tax Court decision.* For restrictions on sale of seized property pending Tax Court decision, see section 6863 (b) (3) and § 301.6863–2.

§ 301.6336 Statutory provisions; sale of perishable goods.

SEC. 6336. *Sale of perishable goods.* If the Secretary or his delegate determines that any property seized is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, he shall appraise the value of such property and—

(1) *Return to owner.* If the owner of the property can be readily found, the Secretary or his delegate shall give him notice of such determination of the appraised value of the property. The property shall be returned to the owner if, within such time as may be specified in the notice, the owner—

(A) Pays to the Secretary or his delegate an amount equal to the appraised value, or

(B) Gives bond in such form, with such sureties, and in such amount as the Secretary or his delegate shall prescribe, to pay the appraised amount at such time as the Secretary or his delegate determines to be appropriate in the circumstances.

(2) *Immediate sale.* If the owner does not pay such amount or furnish such bond in accordance with this section, the Secretary or his delegate shall as soon as practicable make public sale of the property in accordance with such regulations as may be prescribed by the Secretary or his delegate.

§ 301.6336–1 Sale of perishable goods.

(a) *Appraisal of certain seized property.* If the district director determines that any property seized by levy is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, he shall appraise the value of such property and return it to the owner if the owner complies with the conditions prescribed in paragraph (b) of this section or, if the owner does not comply with such conditions, dispose of the property in accordance with paragraph (c) of this section.

(b) *Return to owner.* If the owner of the property can be readily found, the district director shall give him written notice of his determination of the appraised value of the property. However, if the district director determines that the circumstances require immediate action, he may give the owner an oral notice of his determination of the appraised value of the property, which notice shall be confirmed in writing prior to sale. The property shall be returned to the owner if, within the time specified in the notice, the owner—

(1) Pays to the district director an amount equal to the appraised value, or

(2) Gives an acceptable bond as prescribed by section 7101 and § 301.7101–1. Such bond shall be in an amount not less than the appraised value of the property and shall be conditioned upon the payment of such amount at such time as the district director determines to be appropriate in the circumstances.

(c) *Immediate sale.* If the owner does not pay the amount of the appraised value of the seized property within the time specified in the notice, or furnish bond as provided in paragraph (b) of this section within such time, the district director shall as soon as practicable make public sale of the property in accordance with the following terms and conditions—

(1) *Notice of sale.* If the owner can readily be found, a notice shall be given to him. A notice of sale also shall be posted in two public places in the county in which the property is to be sold. The notice shall specify the time and place of sale, the property to be sold, and the manner and conditions of sale. The district director may give such other notice and in such other manner as he deems advisable under the circumstances.

(2) *Sale.* The property shall be sold at public auction to the highest bidder.

(3) *Terms.* The purchase price shall be paid in full upon acceptance of the highest bid. The payment shall be made in cash, or by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order.

§ 301.6337 Statutory provisions; redemption of property.

SEC. 6337. *Redemption of property*—(a) *Before sale.* Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, if any, to the Secretary or his delegate at any time prior to the sale thereof, and upon such payment the Secretary or his delegate shall restore such property to him, and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) *Redemption of real estate after sale*—(1) *Period.* The owners of any real property sold as provided in section 6335, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within 1 year after the sale thereof.

(2) *Price.* Such property or tract of property shall be permitted to be redeemed upon payment to the purchaser, or in case he cannot be found in the county in which the property to be redeemed is situated, then to the Secretary or his delegate, for the use of the purchaser, his heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum.

(c) *Record.* When any lands sold are redeemed as provided in this section, the Secretary or his delegate shall cause entry of the fact to be made upon the record mentioned in section 6340, and such entry shall be evidence of such redemption.

§ 301.6337–1 Redemption of property.

(a) *Before sale.* Any person whose property has been levied upon shall have the right to pay the amount due, together with costs and expenses of the proceeding, if any, to the district director at any time prior to the sale of the property. Upon such payment the district director shall restore such property to the owner and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) *Redemption of real estate after sale*—(1) *Period.* The owner of any real estate sold as provided in section 6335, his heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within one year after the sale thereof.

(2) *Price.* Such property or tract of property may be redeemed upon payment to the purchaser, or in case he cannot be found in the county in which the property to be redeemed is situated, then to the district director for the internal revenue district in which the property is situated, for the use of the purchaser, his heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum. In case real and personal property (or several tracts of real property) are purchased in the aggregate, the redemption price of the real property (or of each of the several tracts) shall be determined on the basis of the ratio, as of the time of sale, of the value of the real property (or tract) to the value of the total property purchased. For this purpose the minimum price or the highest bid price, whichever is higher, offered for the property separately or in groups shall be treated as the value.

(c) *Record.* When any real property is redeemed, the district director shall cause entry of the fact to be made upon the record of sale kept in accordance with section 6340, and such entry shall be evidence of such redemption. The party who redeems the property shall notify the district director of the internal revenue district in which the property is situated of the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid.

§ 301.6338 Statutory provisions; certificate of sale; deed of real property.

SEC. 6338. *Certificate of sale; deed of real property*—(a) *Certificate of sale.* In the case of property sold as provided in section 6335, the Secretary or his delegate shall give to the purchaser a certificate of sale upon payment in full of the purchase price. In the case of real property, such certificate shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor.

(b) *Deed to real property.* In the case of any real property sold as provided in section 6335 and not redeemed in the manner and within the time provided in section 6337, the Secretary or his delegate shall execute (in accordance with the laws of the State in which such real property is situated pertaining to sales of real property under execution) to the purchaser of such real property at such sale, upon his surrender of the certificate of sale, a deed of the real property so purchased by him, reciting the facts set forth in the certificate.

(c) *Real property purchased by United States.* If real property is declared purchased by the United States at a sale pursuant to section 6335, the Secretary or his delegate shall at the proper time execute a deed therefor after its preparation and the endorsement of approval as to its form by the United States attorney for the district in which the property is situated, and the Secretary or his delegate shall, without delay, cause the deed to be duly recorded in the proper registry of deeds.

[Sec. 6338 as amended by sec. 78, Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.6338–1 Certificate of sale; deed of real property.

(a) *Certificate of sale.* In the case of property sold as provided in section 6335 (relating to sale of seized property), the district director shall give to the purchaser a certificate of sale upon payment in full of the purchase price. A certificate of sale of real property shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor.

(b) *Deed to real property.* In the case of any real property sold as provided in section 6335 and not redeemed in the manner and within the time prescribed in section 6337, the district director shall execute (in accordance with the laws of the State in which the real property is situated pertaining to sales of real property under execution) to the purchaser of such real property at the sale or his assigns, upon surrender of the certificate of sale, a deed of the real property so purchased, reciting the facts set forth in the certificate.

(c) *Deed to real property purchased by the United States.* If real property is declared purchased by the United States at a sale pursuant to section 6335, the district director shall at the proper time execute a deed therefor after its preparation and the endorsement of approval as to the form by the United States attorney for the district in which the property is situated, and the district director shall, without delay, cause the deed to be duly recorded in the proper registry of deeds.

§ 301.6339 Statutory provisions; legal effect of certificate of sale of personal property and deed of real property.

SEC. 6339. *Legal effect of certificate of sale of personal property and deed of real prop-*

erty—(a) *Certificate of sale of property other than real property.* In all cases of sale pursuant to section 6335 of property (other than real property), the certificate of such sale—

(1) *As evidence.* Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(2) *As conveyances.* Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) *As authority for transfer of corporate stock.* If such property consists of stocks, shall be notice, when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) *As receipts.* If the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) *As authority for transfer of title to motor vehicle.* If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

(b) *Deed of real property.* In the case of the sale of real property pursuant to section 6335—

(1) *Deed as evidence.* The deed of sale given pursuant to section 6338 shall be prima facie evidence of the facts therein stated; and

(2) *Deed as conveyance of title.* If the proceedings of the Secretary or his delegate as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

[Sec. 6339 as amended by sec. 79, Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.6339–1 Legal effect of certificate of sale of personal property and deed of real property.

(a) *Certificate of sale of property other than real property.* In all cases of sale pursuant to section 6335 of property (other than real property), the certificate of such sale—

(1) *As evidence.* Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(2) *As conveyance.* Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) *As authority for transfer of corporate stock.* If such property consists of corporate stocks, shall be notice, when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the stock certificate, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) *As receipts.* If the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the certificate of sale as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) *As authority for transfer of title to motor vehicle.* If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the certificate of title, in lieu of any original or prior certificate, which shall be null and void, whether canceled or not.

(b) *Deed to real property.* In the case of the sale of real property pursuant to section 6335—

(1) *Deed as evidence.* The deed of sale given pursuant to section 6338 shall be prima facie evidence of the facts therein stated; and

(2) *Deed as conveyance of title.* If the proceedings of the district director as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

§ 301.6340 Statutory provisions; records of sale.

SEC. 6340. *Records of sale*—(a) *Requirement.* The Secretary or his delegate shall, for each internal revenue district, keep a record of all sales of real property under section 6335 and of redemptions of such property. The record shall set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed.

(b) *Copy as evidence.* A copy of such record, or any part thereof, certified by the Secretary or his delegate shall be evidence in any court of the truth of the facts therein stated.

§ 301.6340–1 Records of sale.

(a) *Requirement.* Each district director shall keep a record of all sales under section 6335 of real property situated within his district and of redemptions of such property. The records shall set forth (1) the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, the date of the deed, and, in the case of redemption of the property, (2) the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid.

(b) *Copy as evidence.* A copy of such record, or any part thereof, certified by the district director shall be evidence in any court of the truth of the facts therein stated.

§ 301.6341 Statutory provisions; expense of levy and sale.

SEC. 6341. *Expense of levy and sale.* The Secretary or his delegate shall determine the expenses to be allowed in all cases of levy and sale.

§ 301.6341–1 Expense of levy and sale.

The district director shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in connection with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the district director shall properly apportion the expenses to the real property (or to each tract).

§ 301.6342 Statutory provisions; application of proceeds of levy.

SEC. 6342. *Application of proceeds of levy*—(a) *Collection of liability.* Any money realized by proceedings under this subchapter (whether by seizure, by surrender under section 6332, or by sale of seized property) shall be applied as follows:

(1) *Expense of levy and sale.* First, against the expenses of the proceedings under this subchapter;

(2) *Specific tax liability on seized property.* If the property seized and sold is subject to a tax imposed by any internal revenue law which has not been paid, the amount remaining after applying paragraph (1) shall then be applied against such tax liability (and, if such tax was not previously assessed, it shall then be assessed);

(3) *Liability of delinquent taxpayer.* The amount, if any, remaining after applying paragraphs (1) and (2) shall then be applied against the liability in respect of which the levy was made.

(b) *Surplus proceeds.* Any surplus proceeds remaining after the application of subsection (a) shall, upon application and satisfactory proof in support thereof, be credited or refunded by the Secretary or his delegate to the person or persons legally entitled thereto.

§ 301.6342–1 Application of proceeds of levy.

(a) *Collection of liability.* Any money realized by proceedings under subchapter D, chapter 64, of the Code (whether by seizure, by surrender under section 6332, or by sale of seized property), shall be applied as follows:

(1) *Expense of levy and sale.* First, against the expenses of the proceedings as allowable under section 6341;

(2) *Specific tax liability on seized property.* If the property seized and sold is subject to a tax imposed by any internal revenue law which has not been paid, the amount remaining after applying subparagraph (1) of this paragraph shall then be applied against such tax liability (and, if such tax was not previously assessed, it shall then be assessed);

(3) *Liability of delinquent taxpayer.* The amount, if any, remaining after applying subparagraphs (1) and (2) of this paragraph shall then be applied against the liability in respect of which the levy was made.

(b) *Surplus proceeds.* Any surplus proceeds remaining after the application of paragraph (a) of this section shall, upon application and satisfactory proof in support thereof, be credited or refunded by the district director to the person or persons legally entitled thereto. The delinquent taxpayer is the person entitled to the surplus proceeds unless another person establishes a superior claim thereto.

§ 301.6343 Statutory provisions; authority to release levy.

SEC. 6343. *Authority to release levy.* It shall be lawful for the Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, to release the levy upon all or part of the property or rights to property levied upon where the Secretary or his delegate determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy.

§ 301.6343–1 Authority to release levy.

(a) *Authority.* The district director may release the levy upon all or part of the property or rights to property levied upon as provided in paragraphs (b) and (c) of this section. A levy may be released under paragraph (b) of this section only if the delinquent taxpayer complies with such of the conditions thereunder as the district director may require and if the district director determines that such action will facilitate the collection of the liability. A release pursuant to paragraph (c) of this section is considered to facilitate the collection of the liability. The release under this section shall not operate to prevent any subsequent levy.

(b) *Conditions for release.* The district director may release the levy as authorized under paragraph (a) of this section, if—

(1) *Escrow arrangement.* The delinquent taxpayer offers, and there is accepted by the district director, a satisfactory arrangement placing property in escrow to secure the payment of the liability (including the expenses of levy) which is the basis of the levy.

(2) *Bond.* The delinquent taxpayer delivers an acceptable bond to the district director conditioned upon the payment of the liability (including the expenses of levy) which is the basis of the levy. Such bond shall be in the form provided in section 7101 and § 301.7101–1.

(3) *Payment of amount of United States' interest in the property.* There is paid to the district director an amount determined by him to be equal to the interest of the United States in the seized property or the part of the seized property to be released.

(4) *Assignment of salaries and wages.* The delinquent taxpayer executes an agreement directing his employer to pay to the district director amounts deducted from the employee's wages on a regular, continuing, or periodic basis, in such manner and in such amount as is agreed upon with the district director, until the full amount of the liability is satisfied, and such agreement is accepted by the employer.

(5) *Installment payment arrangement.* The delinquent taxpayer makes satisfactory arrangements with the district director to pay the amount of the liability in installments.

(6) *Extension of statute of limitations.* The delinquent taxpayer executes an agreement to extend the statute of limitations in accordance with section 6502 (a) (2) and § 301.6502–1.

(c) *Release where value of interest of United States is insufficient to meet expenses of sale.* The district director may release the levy as authorized under paragraph (a) of this section if he determines that the value of the interest of the United States in the seized property, or in the part of the seized property to be released, is insufficient to cover the expenses of the sale of such property.

§ 301.6344 Statutory provisions; cross references.

SEC. 6344. *Cross references*—(a) *Length of period.* For period within which levy may be begun in case of—

(1) Income, estate, and gift taxes, see sections 6502 (a) and 6503 (a) (1).

(2) Employment and miscellaneous excise taxes, see section 6502(a).

(b) *Delinquent collection officers.* For distraint proceedings against delinquent internal revenue officers, see section 7803(d).

(c) *Other references.* For provisions relating to—

(1) Stamps, marks and brands, see section 6807.

(2) Administration of real estate acquired by the United States, see section 7506.

Abatements, Credits, and Refunds

PROCEDURE IN GENERAL

§ 301.6401 Statutory provisions; amounts treated as overpayments.

SEC. 6401. *Amounts treated as overpayments*—(a) *Assessment and collection after limitation period.* The term "overpayment" includes that part of the amount of the payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation properly applicable thereto.

(b) *Excessive withholding.* If the amount allowable as a credit under section 31 (relating to credit for tax withheld at the source under chapter 24) exceeds the taxes imposed by chapter 1 against which such credit is allowable, the amount of such excess shall be considered an overpayment.

(c) *Rule where no tax liability.* An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

§ 301.6401–1 Amounts treated as overpayments.

(a) The term "overpayment" includes:

(1) Any payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation applicable thereto.

(2) Any amount allowable for a taxable year as a credit under section 31 (relating to credit for income tax withheld at source on wages) which exceeds the correct income tax imposed by chapter 1 of the Code for such year.

(b) An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

§ 301.6402 Statutory provisions; authority to make credits or refunds.

SEC. 6402. *Authority to make credits or refunds*—(a) *General rule.* In the case of any overpayment, the Secretary or his delegate, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall refund any balance to such person.

(b) *Credits against estimated tax.* The Secretary or his delegate is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the Secretary (or his delegate) to be an overpayment of the income tax for a preceding taxable year.

§ 301.6402–1 Authority to make credits or refunds.

The Commissioner, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment, and the balance, if any, shall be refunded to such person by the Commissioner.

§ 301.6402–2 Claims for credit or refund.

(a) *Requirement that claim be filed.* (1) Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer. Furthermore, under section 7422, a civil action for refund may not be instituted unless a claim has been filed within the properly applicable period of limitation.

(2) The claim, together with appropriate supporting evidence, must be filed in the office of the district director for the internal revenue district in which the tax was paid. As to interest in the case of credits or refunds, see section 6611. See section 7502 for provisions treating timely mailing as timely filing and section 7503 for time for filing claim when the last day falls on Saturday, Sunday, or a legal holiday.

(b) *Grounds set forth in claim.* (1) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period. The claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Commissioner of the exact basis thereof. The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund or credit.

(2) The district director has no authority to refund on equitable grounds

penalties or other amounts legally collected.

(c) *Form for filing claim.* Claims by the taxpayer for the refunding of overpayments of taxes, interest, penalties, and additions to tax shall be made on Form 843. For special rules applicable to income tax, see § 301.6402–3. For other provisions relating to credits and refunds of taxes other than income tax, see the regulations relating to the particular tax.

(d) *Separate claims for separate taxable periods.* In the case of income, gift, and Federal unemployment taxes, a separate claim shall be made for each type of tax for each taxable year or period.

(e) *Proof of representative capacity.* If a return is filed by an individual and, after his death, a refund claim is filed by his legal representative, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the legal representative to file the claim. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. A claim may be executed by an agent of the person assessed, but in such case a power of attorney must accompany the claim.

(f) *Mailing of refund check.* (1) Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and, except as provided in subparagraph (2) of this paragraph, the district director may send the checks direct to the claimant or to such person in care of an attorney or agent who has filed a power of attorney specifically authorizing him to receive such checks.

(2) Checks in payment of claims which have either been reduced to judgment or settled in the course or as a result of litigation will be drawn in the name of the person or persons entitled to the money and, in the case of actions arising in the United States district courts, will be sent to the appropriate United States attorney, and, in actions arising in the United States Court of Claims, to the Assistant Attorney General, Tax Division, Department of Justice, for delivery to the taxpayer or the counsel of record in the court proceeding.

(3) For restrictions on the assignment of claims, see section 3477 of the Revised Statutes (31 U. S. C. 203).

§ 301.6402–3 Special rules applicable to income tax.

(a) In the case of income tax, claims for refund may not only be made on Form 843 but may also be made on any individual, fiduciary, or corporation income tax return (other than the return of a departing alien on Form 1040C), or on any amended income tax return.

(b) A properly executed individual, fiduciary, or corporation income tax return shall, at the election of the taxpayer, constitute a claim for refund or credit within the meaning of section 6402 and section 6511 for the amount of the overpayment disclosed by such return. For purposes of section 6511, such claim shall be considered as filed on the date on which such return is considered as filed, except that if the requirements of § 301.7502–1, relating to timely mailing treated as timely filing, are met the claim shall be considered to be filed on the date of the postmark stamped on the cover in which the return was mailed. An election to treat the return as a claim for refund or credit shall be evidenced by a statement on the return setting forth the amount determined as an overpayment and advising whether such amount shall be refunded to the taxpayer or shall be applied as a credit against the taxpayer's estimated income tax for the taxable year immediately succeeding the taxable year for which such return is filed. If the taxpayer elects to have all or part of the overpayment shown by his return applied to his estimated income tax for his succeeding taxable year, no interest shall be allowed on such portion of the overpayment credited and such amount shall be applied as a payment on account of the estimated income tax for such year or the installments thereof.

(c) The filing of a properly executed income tax return on Form 1040A shall, in any case in which the taxpayer is not required to show his tax on such form, constitute an election by the taxpayer to have the return treated as a claim for refund, and such return shall constitute a claim for refund within the meaning of section 6402 and section 6511 for the amount of the overpayment shown by the district director's computation of the tax on the basis of the return. For purposes of section 6511, such claim shall be considered as filed on the date on which such return is considered as filed, except that if the requirements of § 301.7502–1, relating to timely mailing treated as timely filing, are met the claim shall be considered to be filed on the date of the postmark stamped on the cover in which the return was mailed.

(d) In any case in which a taxpayer elects to have an overpayment refunded to him he may not thereafter change his election to have the overpayment applied as a payment on account of his estimated income tax.

§ 301.6402–4 Payments in excess of amounts shown on return.

In certain cases, the taxpayer's payments in respect of his tax liability, made before the filing of his return, may exceed the amount of tax shown on the return. For example, such payments may arise in the case of the income tax when the estimated tax or the credit for income tax withheld at the source on wages exceeds the amount of tax shown on the return, or where a corporation obtains an extension of time for filing its return and makes installment payments based on its estimate of its tax liability which exceed the tax liability shown on the return subsequently filed. In any case in which the district director determines that the payments by the taxpayer (made within the period prescribed for payment and before the filing of the return) are in excess of the amount of tax shown on the return, he may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. However, the provisions of §§ 301.6402–2 and 301.6402–3 are applicable to such overpayment, and taxpayers should submit claims for refund (if the income tax return is not itself a claim for refund, as provided in § 301.6402–3) to protect themselves in the event the district director fails to make such determination and credit or refund. The provisions of section 6405 (relating to reports of refunds of more than $100,000 to the Joint Committee on Internal Revenue Taxation) are not applicable to the overpayments described in this section caused by timely payments of tax which exceed the amount of tax shown on a timely return.

§ 301.6403 Statutory provisions; overpayment of installment.

SEC. 6403. *Overpayment of installment.* In the case of a tax payable in installments, if the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in section 6402.

§ 301.6403–1 Overpayment of installment.

If any installment of tax is overpaid, the overpayment shall first be applied against any outstanding installments of such tax. If the overpayment exceeds the correct amount of tax due, the overpayment shall be credited or refunded as provided in section 6402 and §§ 301.6402–1 to 301.6402–4, inclusive.

§ 301.6404 Statutory provisions; abatements.

SEC. 6404. *Abatements*—(a) *General rule.* The Secretary or his delegate is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which—

(1) is excessive in amount, or

(2) is assessed after the expiration of the period of limitation properly applicable thereto, or

(3) is erroneously or illegally assessed.

(b) *No claim for abatement of income, estate, and gift taxes.* No claim for abatement shall be filed by a taxpayer in respect of an assessment of any tax imposed under subtitle A or B.

(c) *Small tax balances.* The Secretary or his delegate is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if the Secretary or his delegate determines under uniform rules prescribed by the Secretary or his delegate that the administration and collection costs involved would not warrant collection of the amount due.

§ 301.6404–1 Abatements.

(a) The district director may abate any assessment, or unpaid portion thereof, if the assessment is in excess of the correct tax liability, if the assessment is made subsequent to the expiration of the period of limitations applicable thereto, or if the assessment has been erroneously or illegally made.

(b) No claim for abatement may be filed with respect to income, estate, or gift tax.

(c) Except in case of income, estate, or gift tax, if more than the correct amount of tax, interest, additional amount, addition to the tax, or assessable penalty is assessed but not paid to the district director, the person against whom the assessment is made may file a claim for abatement of such overassessment. Each claim for abatement under this section shall be made on Form 843 and shall be filed with the district director for the internal revenue district in which the tax was assessed. Form 843 shall be made in accordance with the instructions relating to such form.

(d) The Commissioner may issue uniform instructions to district directors authorizing them, to the extent permitted in such instructions, to abate amounts the collection of which is not warranted because of the administration and collection costs.

§ 301.6405 Statutory provisions; reports of refunds and credits.

SEC. 6405. *Reports of refunds and credits*—(a) *By Treasury to Joint Committee.* No refund or credit of any income, war profits, excess profits, estate, or gift tax in excess of $100,000 shall be made until after the expiration of 30 days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and the decision of the Secretary or his delegate, is submitted to the Joint Committee on Internal Revenue Taxation.

(b) *By Joint Committee to Congress.* A report to Congress shall be made annually by such committee of such refunds and credits, including the names of all persons and corporations to whom amounts are credited or payments are made, together with the amounts credited or paid to each.

(c) *Tentative adjustments.* Any credit or refund allowed or made under section 6411 shall be made without regard to the provisions of subsection (a) of this section. In any such case, if the credit or refund, reduced by any deficiency in such tax thereafter assessed and by deficiencies in any other tax resulting from adjustments reflected in the determination of the credit or refund, is in excess of $100,000, there shall be submitted to such committee a report containing the matter specified in subsection (a) at such time after the making of the credit or refund as the Secretary or his delegate shall determine the correct amount of the tax.

§ 301.6405–1 Reports of refunds and credits.

Section 6405 requires that a report be made to the Joint Committee on Internal Revenue Taxation of proposed refunds or credits of any income, war profits, excess profits, estate, or gift tax in excess of $100,000.

§ 301.6406 Statutory provisions; prohibition of administrative review of decisions.

SEC. 6406. *Prohibition of administrative review of decisions.* In the absence of fraud or mistake in mathematical calculation, the findings of fact in and the decision of the Secretary or his delegate upon the merits of any claim presented under or authorized by the internal revenue laws and the allowance or nonallowance by the Secretary or his delegate of interest on any credit or refund under the internal revenue laws shall not, except as provided in subchapters C and D of chapter 76 (relating to the Tax Court), be subject to review by any other administrative or accounting officer, employee, or agent of the United States.

§ 301.6407 Statutory provisions; date of allowance of refund or credit.

SEC. 6407. *Date of allowance of refund or credit.* The date on which the Secretary or his delegate first authorizes the scheduling of an overassessment in respect of any internal revenue tax shall be considered as the date of allowance of refund or credit in respect of such tax.

§ 301.6407–1 Date of allowance of refund or credit.

The date on which the district director, or an authorized certifying officer designated by him, first certifies the allowance of an overassessment in respect of any internal revenue tax shall be considered as the date of allowance of refund or credit in respect of such tax.

RULES OF SPECIAL APPLICATION

§ 301.6411 Statutory provisions; tentative carryback adjustments.

SEC. 6411. *Tentative carryback adjustments*—(a) *Application for adjustment.* A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback, provided in section 172(b), from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer, and shall be filed, on or after the date of filing of the return for the taxable year of the net operating loss from which the carryback results and within a period of 12 months from the end of such taxable year, in the manner and form required by regulations prescribed by the Secretary or his delegate. The application shall set forth in such detail and with such supporting data and explanation as such regulations shall require—

(1) The amount of the net operating loss;

(2) The amount of the tax previously determined for the prior taxable year affected by such carryback, the tax previously determined being ascertained in accordance with the method prescribed in section 1314 (a);

(3) The amount of decrease in such tax, attributable to such carryback, such decrease being determined by applying the carryback in the manner provided by law to the items on the basis of which such tax was determined;

(4) The unpaid amount of such tax, not including any amount required to be shown under paragraph (5);

(5) The amount, with respect to the tax for the taxable year immediately preceding the taxable year of such loss, as to which an extension of time for payment under section 6164 is in effect; and

(6) Such other information for purposes of carrying out the provisions of this section as may be required by such regulations. An application under this subsection shall not constitute a claim for credit or refund.

(b) *Allowance of adjustments.* Within a period of 90 days from the date on which an application for a tentative carryback adjustment is filed under subsection (a), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss from which such carryback results, whichever is the later, the Secretary or his delegate shall make, to the extent he deems practicable in such period, a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the decrease in the tax attributable to such carryback upon the basis of the application and the examination, except that the Secretary or his delegate may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such 90-day period or material omissions. Such decrease shall be applied against any unpaid amount of the tax decreased (including any amount of such tax as to which an extension of time under section 6164 is in effect) and any remainder shall be credited against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss the time for payment of which tax is extended under section 6164. Any remainder shall, within such 90-day period, be either credited against any tax or installment thereof then due from the taxpayer, or refunded to the taxpayer.

(c) *Consolidated returns.* If the corporation seeking a tentative carryback adjustment under this section, made or was required to make a consolidated return, either for the taxable year within which the net operating loss arises, or for the preceding taxable year affected by such loss, the provisions of this section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary or his delegate may by regulations prescribe.

§ 301.6411–1 Tentative carryback adjustments.

For regulations under section 6411, see §§ 1.6411–1 to 1.6411–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6412 Statutory provisions; floor stocks refunds.

SEC. 6412. *Floor stocks refunds*—(a) *In general*—(1) *Passenger automobiles, etc.* Where before July 1, 1961, any article subject to the tax imposed by section 4061(a)(2) has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by such manufacturer, producer, or importer on his sale of the article and the amount of tax made applicable to such article on and after July 1, 1961, if claim for such credit or refund is filed with the Secretary or his delegate on or before November 10, 1961, based upon a request submitted to the manufacturer, producer, or importer before October 1, 1961, by the dealer who held the article in respect of which the credit or refund is claimed, and, on or before November 10, 1961, reimbursement has been made to such dealer by such manufacturer, producer, or importer for the tax reduction on such article or written consent has been obtained from such dealer to allowance of such credit or refund.

(2) *Trucks and buses, tires, tread rubber, and gasoline.* Where before July 1, 1972, any article subject to the tax imposed by section 4061 (a) (1), 4071 (a) (1) or (4), or 4081 has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale (or, in the case of tread rubber, is intended for sale or is held for use), there shall be credited or refunded (without interest) to the manufacturer,

producer, or importer an amount equal to the difference between the tax paid by such manufacturer, producer, or importer on his sale of the article and the amount of tax made applicable to such article on and after July 1, 1972, if claim for such credit or refund is filed with the Secretary or his delegate on or before November 10, 1972, based upon a request submitted to the manufacturer, producer, or importer before October 1, 1972, by the dealer who held the article in respect of which the credit or refund is claimed, and, on or before November 10, 1972, reimbursement has been made to such dealer by such manufacturer, producer, or importer for the tax reduction on such article or written consent has been obtained from such dealer to allowance of such credit or refund. No credit or refund shall be allowable under this paragraph with respect to gasoline in retail stocks held at the place where intended to be sold at retail, nor with respect to gasoline held for sale by a producer or importer of gasoline.

(3) *Gasoline held on July 1, 1961.* Where before July 1, 1961, any gasoline subject to the tax imposed by section 4081 has been sold by the producer or importer and on such date is held by a dealer and is intended for sale, there shall be credited or refunded (without interest) to the producer or importer an amount equal to the difference between the tax paid by such producer or importer on his sale of the gasoline and the amount of tax made applicable to such gasoline on and after July 1, 1961, if claim for such credit or refund is filed with the Secretary or his delegate on or before November 10, 1961, based upon a request submitted to the producer or importer before October 1, 1961, by the dealer who held the gasoline in respect of which the credit or refund is claimed, and, on or before November 10, 1961, reimbursement has been made to such dealer by such producer or importer for the tax reduction on such gasoline or written consent has been obtained from such dealer to allowance of such credit or refund. No credit or refund shall be allowable under this paragraph with respect to gasoline in retail stocks held at the place where intended to be sold at retail, nor with respect to gasoline held for sale by a producer or importer of gasoline.

(4) *Definitions.* For purposes of this section—

(A) The term "dealer" includes a wholesaler, jobber, distributor, or retailer, or, in the case of tread rubber subject to tax under section 4071 (a) (4), includes any person (other than the manufacturer, producer, or importer thereof) who holds such tread rubber for sale or use.

(B) An article shall be considered as "held by a dealer" if title thereto has passed to such dealer (whether or not delivery to him has been made), and if for purposes of consumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

(b) *Limitation on eligibility for credit or refund.* No manufacturer, producer, or importer shall be entitled to credit or refund under subsection (a) unless he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed under this section.

(c) *Other laws applicable.* All provisions of law, including penalties, applicable in respect of the taxes imposed by sections 4061, 4071, and 4081 shall, insofar as applicable and not inconsistent with subsections (a) and (b) of this section, apply in respect of the credits and refunds provided for in subsection (a) to the same extent as if such credits or refunds constituted overpayments of such taxes.

(d) *Sugar.* With respect to any sugar or articles composed in chief value of sugar upon which tax imposed under section 4501 (b) has been paid and which, on September 30, 1961, are held by the importer and intended for sale or other disposition, there shall be refunded (without interest) to such importer, subject to such regulations as may be prescribed by the Secretary or his delegate, an amount equal to the tax paid with respect to such sugar or articles composed in chief value of sugar, if claim for such refund is filed with the Secretary or his delegate on or before September 30, 1961.

(e) *Cross reference.* For floor stocks refunds in case of certain alcohol and tobacco taxes, see sections 5063 and 5707.

[Sec. 6412 as amended by sec. 3(b)(4), Tax Rate Extension Act 1955 (69 Stat. 15); sec. 3(b)(4), Tax Rate Extension Act 1956 (70 Stat. 67); sec. 19, Act of May 29, 1956 (Pub. Law 545, 84th Cong., 70 Stat. 221); sec. 208 (a), Highway Revenue Act 1956 (70 Stat. 392); sec. 3(b)(4), Tax Rate Extension Act 1957 (71 Stat. 10); sec. 3(b)(4), Tax Rate Extension Act 1958 (72 Stat. 260); sec. 162(a), Excise Tax Technical Changes Act 1958 (72 Stat. 1306); sec. 3(b)(3), Tax Rate Extension Act 1959 (73 Stat. 158); sec. 201(c)(4), Federal-Aid Highway Act 1959 (73 Stat. 614); sec. 202(b)(3), Public Debt and Tax Rate Extension Act 1960 (74 Stat. 291); sec. 2, Act of July 6, 1960 (Pub. Law 86-592, 74 Stat. 330)]

§ 301.6413 Statutory provisions; special rules applicable to certain employment taxes.

SEC. 6413. *Special rules applicable to certain employment taxes*—(a) *Adjustment of tax*—(1) *General rule.* If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of remuneration, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulations prescribe.

(2) *United States as employer.* For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(b) *Overpayments of certain employment taxes.* If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of remuneration and the overpayment cannot be adjusted under subsection (a) of this section, the amount of the overpayment shall be refunded in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

(c) *Special refunds*—(1) *In general.* If by reason of an employee receiving wages from more than one employer during a calendar year after the calendar year 1950 and prior to the calendar year 1955, the wages received by him during such year exceed $3,600, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 1400 of the Internal Revenue Code of 1939 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $3,600 of such wages received; or if by reason of an employee receiving wages from more than one employer (A) during any calendar year after the calendar year 1954 and prior to the calendar year 1959, the wages received by him during such year exceed $4,200, or (B) during any calendar year after the calendar year 1958, the wages received by him during such year exceed $4,800, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $4,200 of such wages received in such calendar year after 1954 and before 1959, or which exceeds the tax with respect to the first $4,800 of such wages received in such calendar year after 1958.

(2) *Applicability in case of Federal and State employees and employees of certain foreign corporations*—(A) *Federal employees.* In the case of remuneration received from the United States or a wholly owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall, for purposes of this subsection, be deemed a separate employer, and the term "wages" includes for purposes of this subsection the amount, not to exceed $3,600 for the calendar year 1951, 1952, 1953, or 1954, $4,200 for the calendar year 1955, 1956, 1957, or 1958, or $4,800 for any calendar year after 1958, determined by each such head or agent as constituting wages paid to an employee.

(B) *State employees.* For purposes of this subsection, in the case of remuneration received during any calendar year, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act as would be wages if such services constituted employment; the term "employer" includes a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement made pursuant to section 218 of the Social Security Act, an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid to the Secretary.

(C) *Employees of certain foreign corporations.* For purposes of paragraph (1) of this subsection, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121 (l) as would be wages if such services constituted employment; the term "employer" includes any domestic corporation which has entered into an agreement pursuant to section 3121 (l); the term "tax" or "tax imposed by section 3101," includes, in the case of services covered by an agreement entered into pursuant to section 3121 (l), an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of paragraph (1) of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of the agreement entered into pursuant to section 3121 (l) has been paid to the Secretary or his delegate.

(d) *Refund or credit of Federal unemployment tax.* Any credit allowable under section 3302, to the extent not previously allowed, shall be considered an overpayment, but no interest shall be allowed or paid with respect to such overpayment.

[Sec. 6413 as amended by sec. 202, Social Security Amendments 1954 (68 Stat. 1089); sec. 402(d), Social Security Amendments 1958 (72 Stat. 1043)]

§ 301.6413–1 Special rules applicable to certain employment taxes.

For regulations under section 6413, see §§ 31.6413(a)–1 to 31.6413(c)–1, inclusive, of this chapter (Employment Tax Regulations).

§ 301.6414 Statutory provisions; income tax withheld.

SEC. 6414. *Income tax withheld.* In the case of an overpayment of tax imposed by chapter 24, or by chapter 3, refund or credit shall be made to the employer or to the withholding agent, as the case may be, only to the extent that the amount of such overpayment was not deducted and withheld by the employer or withholding agent.

§ 301.6414–1 Income tax withheld.

For regulations under section 6414, see § 31.6414–1 of this chapter (Employment Tax Regulations).

§ 301.6415 Statutory provisions; credits or refunds to persons who collected certain taxes.

SEC. 6415. *Credits or refunds to persons who collected certain taxes*—(a) *Allowance of credits or refunds.* Credit or refund of any overpayment of tax imposed by section 4231(1), 4231(2), 4231(3), 4241, 4251, 4261, or 4286 may be allowed to the person who collected the tax and paid it to the Secretary or his delegate if such person establishes, under such regulations as the Secretary or his delegate may prescribe, that he has repaid the amount of such tax to the person from whom he collected it, or obtains the consent of such person to the allowance of such credit or refund. For purposes of this subsection, in the case of any payment outside the United States in respect of which tax is imposed under paragraph (1), (2), or (3) of section 4231, the person who paid for the admission or for the use of the box or seat shall be considered the person from whom the tax was collected.

(b) *Credit on returns.* Any person entitled to a refund of tax imposed by section 4231(1), 4231(2), 4231(3), 4241, 4251, 4261, or 4286 paid, or collected and paid, to the Secretary or his delegate by him may, instead of filing a claim for refund, take credit therefor against taxes imposed by such section due upon any subsequent return.

(c) *Refund of overcollections.* In case any person required under section 4231(1), 4231(2), 4231(3), 4241, 4251, 4261, or 4286 to collect any tax shall make an overcollection of such tax, such person shall, upon proper application, refund such overcollection to the person entitled thereto.

(d) *Refund of taxable payment.* Any person making a refund of any payment on which tax imposed by section 4231(1), 4231(2), 4231(3), 4241, 4251, 4261, or 4286 has been collected may repay therewith the amount of tax collected on such payment.

[Sec. 6415 as amended by sec. 4(b)(4), Tax Rate Extension Act 1958 (72 Stat. 260); sec. 163(d)(1), Excise Tax Technical Changes Act 1958 (72 Stat. 1311)]

§ 301.6415–1 Credits or refunds to persons who collected certain taxes.

For regulations under section 6415, see Part 49 of this chapter (Facilities and Services Excise Tax Regulations).

§ 301.6416 Statutory provisions; certain taxes on sales and services.

SEC. 6416. *Certain taxes on sales and services*—(a) *Condition to allowance*—(1) *General rule.* No credit or refund of any overpayment of tax imposed by section 4231 (4), (5), or (6) (cabarets, etc.), chapter 31 (retailers taxes), or chapter 32 (manufacturers taxes) shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary or his delegate, that he—

(A) Has not included the tax in the price of the article, admission, or service with respect to which it was imposed and has not collected the amount of the tax from the person who purchased such article, admission, or service;

(B) Has repaid the amount of the tax—

(i) In the case of any tax imposed by chapter 31 (other than the tax imposed by section 4041(a)(1) or (b)(1)), to the purchaser of the article,

(ii) In the case of any tax imposed by chapter 32 and the tax imposed by section 4041(a)(1) or (b)(1) (diesel and special motor fuels), to the ultimate purchaser of the article, or

(iii) In the case of any tax imposed by section 4231 (4), (5), or (6) (cabarets, etc.) to the person who paid for the admission, refreshment, service, or merchandise;

(C) In the case of an overpayment under subsection (b)(2), (b)(3) (C) or (D), or (b)(4) of this section—

(i) Has repaid or agreed to repay the amount of the tax to the utimate [ultimate] vendor of the article, or

(ii) Has obtained the written consent of such ultimate vendor to the allowance of the credit or the making of the refund; or

(D) Has filed with the Secretary or his delegate the written consent of the person referred to in subparagraph (B) (i), (ii), or (iii), as the case may be, to the allowance of the credit or the making of the refund.

(2) *Exceptions.* This subsection shall not apply to—

(A) The tax imposed by section 4041(a)(2) or (b)(2) (use of diesel and special motor fuels), and

(B) An overpayment of tax under paragraph (1), (3) (A) or (B), or (5) of subsection (b) of this section.

(3) *Special rules.* For purposes of this subsection—

(A) Any tax collected under section 4231(6) from a concessionaire and paid to the Secretary or his delegate shall be treated as paid by the concessionaire;

(B) If tax under chapter 31 was paid by a supplier pursuant to an agreement under section 6011(c), either the person who (without regard to section 6011(c)) was required to return and pay the tax or the supplier may be treated as the person who paid the tax;

(C) In any case in which the Secretary or his delegate determines that an article is not taxable, the term "ultimate purchaser" (when used in paragraph (1)(B)(ii) of this subsection) includes a wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of such determination, holds such article for sale; but only if claim for credit or refund by reason of this subparagraph is filed on or before the day for filing the return with respect to the taxes imposed under chapter 32 for the first period which begins more than 60 days after the date of such determination; and

(D) In applying paragraph (1)(C) to any overpayment under paragraph (2)(F), (3)(C) or (D), or (4) of subsection (b), the term "ultimate vendor" means the ultimate vendor of the other article.

(b) *Special cases in which tax payments considered overpayments.* Under regulations prescribed by the Secretary or his delegate, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

(1) *Price readjustments.* If the price of any article in respect of which a tax, based on such price, is imposed by chapter 31 or 32, is readjusted by reason of the return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance, the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment. The preceding sentence shall not apply in the case of an article in respect of which tax was computed under section 4223(b)(2); but if the price for which such article was sold is readjusted by reason of the return or repossession of the article, the part of the tax proportionate to the part of such price repaid or credited to the purchaser shall be deemed to be an overpayment.

(2) *Specified uses and resales.* The tax paid under chapter 32 (or under section 4041(a)(1) or (b)(1)) in respect of any article shall be deemed to be an overpayment if such article was, by any person—

(A) Exported (except in any case to which subsection (g) applies);

(B) Used or sold for use as supplies for vessels or aircraft;

(C) Sold to a State or local government for the exclusive use of a State or local government;

(D) Sold to a nonprofit educational organization for its exclusive use;

(E) Resold to a manufacturer or producer for use by him as provided in subparagraph (A), (B), or (E) of paragraph (3);

(F) In the case of a tire, inner tube, or receiving set, resold for use as provided in subparagraph (C) or (D) of paragraph (3) and the other article referred to in such subparagraph is by any person exported or sold as provided in such subparagraph;

(G) In the case of a liquid taxable under section 4041, sold for use as fuel in a diesel-powered highway vehicle or as fuel for the propulsion of a motor vehicle, motorboat, or airplane, if (i) the vendee used such liquid otherwise than as fuel in such a vehicle, motorboat, or airplane or resold such liquid, or (ii) such liquid was (within the meaning of paragraphs (1), (2), and (3) of section 6420(c)) used on a farm for farming purposes;

(H) In the case of a liquid in respect of which tax was paid under section 4041 at the rate of 3 cents or 4 cents a gallon, used during any calendar quarter in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes; except that (i) this subparagraph shall apply only if the 60 percent passenger fare revenue test set forth in section 6421(b)(2) is met with respect to such quarter, and (ii) the amount of such overpayment for such quarter shall be an amount determined by multiplying 1 cent (where tax was paid at the 3-cent rate) or 2 cents (where tax was paid at the 4-cent rate) for each gallon of liquid so used by the percentage which such person's tax-exempt passenger fare revenue (as defined in section 6421(d)(2)) derived from such scheduled service during such quarter was of his total passenger fare revenue (not including the tax imposed by section 4261, relating to the tax on transportation of persons) derived from such scheduled service during such quarter;

(I) In the case of a liquid in respect of which tax was paid under section 4041(a)(1) at the rate of 3 cents or 4 cents a gallon, used or resold for use as a fuel in a diesel-powered highway vehicle (i) which (at the time of such use or resale) is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country, or (ii) which, in the case of a diesel-powered highway vehicle owned by the United States, is not used on the highway; except that the amount of any overpayment by reason of this subparagraph shall not exceed an amount computed at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate;

(J) In the case of a liquid in respect of which tax was paid under section 4041(b)(1)

at the rate of 3 cents or 4 cents a gallon, used or resold for use otherwise than as a fuel for the propulsion of a highway vehicle (i) which (at the time of such use or resale) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (ii) which, in the case of a highway vehicle owned by the United States, is used on the highway; except that the amount of any overpayment by reason of this subparagraph shall not exceed an amount computed at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate;

(K) In the case of any article taxable under section 4061(b) (other than spark plugs and storage batteries), used or sold for use as repair or replacement parts or accessories for farm equipment (other than equipment taxable under section 4061(a));

(L) In the case of tread rubber in respect of which tax was paid under section 4071(a)(4), used or sold for use otherwise than in the recapping or retreading of tires of the type used on highway vehicles (as defined in section 4072(c)), unless credit or refund of such tax is allowable under subsection (b)(3);

(M) In the case of gasoline, used or sold for use in production of special motor fuels referred to in section 4041(b);

(N) In the case of lubricating oil, used or sold for nonlubricating purposes;

(O) In the case of lubricating oil in respect of which tax was paid at the rate of 6 cents a gallon, used or sold for use as cutting oils (within the meaning of section 4092(b)); except that the amount of such overpayment shall not exceed an amount computed at the rate of 3 cents a gallon;

(P) In the case of any musical instrument taxable under section 4151, sold to a religious institution for exclusively religious purposes;

(Q) In the case of unexposed motion picture film, used or sold for use in the making of newsreel motion picture film.

(3) *Tax-paid articles used for further manufacture, etc.* If the tax imposed by chapter 32 has been paid with respect to the sale of any article by the manufacturer, producer, or importer thereof to a second manufacturer or producer, such tax shall be deemed to be an overpayment by such second manufacturer or producer if—

(A) In the case of any article other than an article to which subparagraph (B), (C), (D), or (E) applies, such article is used by the second manufacturer or producer as material in the manufacture or production of, or as a component part of, another article taxable under chapter 32 manufactured or produced by him;

(B) In the case of—

(i) A part or accessory taxable under section 4061(b),

(ii) A radio or television component taxable under section 4141, or

(iii) A camera lens taxable under section 4171,

such article is used by the second manufacturer or producer as material in the manufacture or production of, or as a component part of, any other article manufactured or produced by him;

(C) In the case of—

(i) A tire or inner tube taxable under section 4071, or

(ii) An automobile radio or television receiving set taxable under section 4141,

such article is sold by the second manufacturer or producer on or in connection with, or with the sale of, any other article manufactured or produced by him and such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft;

(D) In the case of a radio receiving set or an automobile radio receiving set—

(i) Such set is used by the second manufacturer or producer as a component part of any other article manufactured or produced by him, and

(ii) Such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft; or

(E) In the case of—

(i) A bicycle tire (as defined in section 421(e)(4)(B)), or

(ii) An inner tube for such a tire,

such article is used by the second manufacturer or producer as material in the manufacture or production of, or as a component part of, a bicycle (other than a rebuilt or reconditioned bicycle).

For purposes of subparagraphs (A) and (B), an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

(4) *Tires, inner tubes, and automobile radio and television receiving sets.* If—

(A)(i) A tire or inner tube taxable under section 4071, or automobile radio or television receiving set taxable under section 4141, is sold by the manufacturer, producer, or importer thereof on or in connection with, or with the sale of, any other article manufactured or produced by him, or

(ii) A radio receiving set or an automobile radio receiving set is used by the manufacturer thereof as a component part of any other article manufactured or produced by him; and

(B) Such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft,

any tax imposed by chapter 32 in respect of such tire, inner tube, or receiving set which has been paid by the manufacturer, producer, or importer thereof shall be deemed to be an overpayment by him.

(5) *Return of certain installment accounts.* If—

(A) Tax was paid under section 4053(b)(1) or 4216(e)(1) in respect of any installment account,

(B) Such account is, under the agreement under which the account was sold, returned to the person who sold such account, and

(C) The consideration is readjusted as provided in such agreement,

the part of the tax paid under section 4053(b)(1) or 4216(e)(1) proportionate to the part of the consideration repaid or credited to the purchaser of such account shall be deemed to be an overpayment.

This subsection shall apply in respect of an article only if the exportation or use referred to in the applicable provision of this subsection occurs before any other use, or, in the case of a sale or resale, the use referred to in the applicable provision of this subsection is to occur before any other use.

(c) *Credit for tax paid on tires, inner tubes, or radio or television receiving sets.* If tires, inner tubes, or automobile radio or television receiving sets on which tax has been paid under chapter 32 are sold on or in connection with, or with the sale of, another article taxable under chapter 32, there shall (under regulations prescribed by the Secretary or his delegate) be credited (without interest) against the tax imposed on the sale of such other article, an amount determined by multiplying the applicable percentage rate of tax for such other article by—

(1) The purchase price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) if such tires or inner tubes were taxable under section 4071 (relating to tax on tires and inner tubes) or, in the case of automobile radio or television receiving sets, if such sets were taxable under section 4141; or

(2) If such tires, inner tubes, or automobile radio or television receiving sets were taxable under section 4218 (relating to use by manufacturer, producer, or importer), the price (less, in the case of tires, the part of such price attributable to the metal rim or rim base) at which such or similar tires, inner tubes, or sets are sold, in the ordinary course of trade, by manufacturers, producers, or importers thereof, as determined by the Secretary or his delegate.

The credit provided by this subsection shall be allowable only in respect of the first sale on or in connection with, or with the sale of, another article on the sale of which tax is imposed under chapter 32.

(d) *Mechanical pencils taxable as jewelry.* If any article, on the sale of which tax has been paid under section 4201, is further manufactured or processed resulting in an article taxable under section 4001, the person who sells such article at retail shall, in the computation of the retailers' excise tax due on such sale, be entitled to a credit or refund, without interest, in an amount equal to the tax paid under section 4201.

(e) *Refund to exporter or shipper.* Under regulations prescribed by the Secretary or his delegate the amount of any tax imposed by subchapter E of chapter 31, or chapter 32 erroneously or illegally collected in respect of any article exported to a foreign country or shipped to a possession of the United States may be refunded to the exporter or shipper thereof, if the person who paid such tax waives his claim to such amount.

(f) *Credit on returns.* Any person entitled to a refund of tax imposed by chapter 31 or 32, paid to the Secretary or his delegate may, instead of filing a claim for refund, take credit therefor against taxes imposed by such chapter due on any subsequent return.

(g) *Automobiles, etc.* Under regulations prescribed by the Secretary or his delegate, subsection (b)(2)(A) shall apply, in the case of any article subject to the tax imposed by sections 4061(a), 4111, 4121, and 4141, only if the article with respect to which the tax was paid was sold by the manufacturer, producer, or importer for export after receipt by him of notice of intent to export or to resell for export.

(h) *Accounting procedures for like articles.* Under regulations prescribed by the Secretary or his delegate, if any person uses or resells like articles, then for purposes of this section the manufacturer, producer, or importer of any such article may be identified, and the amount of tax paid under chapter 32 in respect of such article may be determined—

(1) On a first-in-first-out basis,

(2) On a last-in-first-out basis, or

(3) In accordance with any other consistent method approved by the Secretary or his delegate.

(i) *Meaning of terms.* For purposes of this section, any term used in this section has the same meaning as when used in chapter 31, 32, or 33, as the case may be.

[Sec. 6416 as amended by sec. 2, Act of Aug. 11, 1955 (Pub. Law 355, 84th Cong., 69 Stat. 676); secs. 1 (h), (i), 2(b), Act of Aug. 11, 1955 (Pub. Law 367, 84th Cong., 69 Stat. 690); sec. 2(b), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 90); sec. 208(b), Highway Revenue Act 1956 (70 Stat. 393);

sec. 4(b) (5), (6), Tax Rate Extension Act 1958 (72 Stat. 260); sec. 163(a), (c), Excise Tax Technical Changes Act 1958 (72 Stat. 1306); sec. 201(d)(1), Federal-Aid Highway Act 1959 (73 Stat. 614); sec. 3, Act of Apr. 8, 1960 (Pub. Law 86-418, 74 Stat. 38)]

§ 301.6416–1 Certain taxes on sales and services.

For regulations under section 6416, see Part 48 of this chapter (Manufacturers and Retailers Excise Tax Regulations) and Part 49 of this chapter (Facilities and Services Excise Tax Regulations).

§ 301.6417 Statutory provisions; coconut and palm oil.

SEC. 6417. *Coconut and palm oil*—(a) *Sales to States or political subdivisions.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, any person who has sold to a State, or a political subdivision thereof, for use in the exercise of an essential governmental function any article containing any oil, combination, or mixture, upon the processing of which a tax has been paid under section 4511, shall be entitled to a credit or refund of the tax paid with respect to the quantity of such oil, combination, or mixture contained in such article.

(b) *Exportation.* Upon the exportation to any foreign country or to a possession of the United States of any article, wholly or in chief value of an article, with respect to the processing of which a tax has been paid under subchapter B of chapter 37, the exporter thereof shall be entitled to a refund of the amount of such tax.

§ 301.6417–1 Coconut and palm oil.

For regulations under section 6417, see §§ 46.6417–1 and 46.6417–2 of this chapter (Regulations Relating to Miscellaneous Excise Taxes Payable by Return).

§ 301.6418 Statutory provisions; sugar.

SEC. 6418. *Sugar*—(a) *Use as livestock feed or for distillation of alcohol.* Upon the use of any manufactured sugar, or article manufactured therefrom, as livestock feed, or in the production of livestock feed, or for the distillation of alcohol, there shall be paid by the Secretary or his delegate to the person so using such manufactured sugar, or article manufactured therefrom, the amount of any tax paid under section 4501 with respect thereto.

(b) *Exportation.* Upon the exportation from the United States to a foreign country, or the shipment from the United States to any possession of the United States except Puerto Rico, of any manufactured sugar, or any article manufactured wholly or partly from manufactured sugar, with respect to which tax under the provisions of section 4501 (a) has been paid, the amount of such tax shall be paid by the Secretary or his delegate to the consignor named in the bill of lading under which the article was exported or shipped to a possession, or to the shipper, or to the manufacturer of the manufactured sugar or of the articles exported, if the consignor waives any claim thereto in favor of such shipper or manufacturer; except that no such payment shall be allowed with respect to any manufactured sugar, or article, upon which, through substitution or otherwise, a drawback of any tax paid under section 4501 (b) has been or is to be claimed under any provisions of law made applicable by section 4504.

[Sec. 6418 as amended by sec. 21 (b), Act of May 29, 1956 (Pub. Law 545, 84th Cong., 70 Stat. 221)]

§ 301.6418–1 Sugar.

For regulations under section 6418, see §§ 46.6418–1 and 46.6418–2 of this chapter (Regulations Relating to Miscellaneous Excise Taxes Payable by Return).

§ 301.6419 Statutory provisions; excise tax on wagering.

SEC. 6419. *Excise tax on wagering*—(a) *Credit or refund generally.* No overpayment of tax imposed by chapter 35 shall be credited or refunded (otherwise than under subsection (b)), in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Secretary or his delegate, (1) that he has not collected (whether as a separate charge or otherwise) the amount of the tax from the person who placed the wager on which the tax was imposed, or (2) that he has repaid the amount of the tax to the person who placed such wager, or unless he files with the Secretary or his delegate written consent of the person who placed such wager to the allowance of the credit or the making of the refund. In the case of any laid-off wager, no overpayment of tax imposed by chapter 35 shall be so credited or refunded to the person with whom such laid-off wager was placed unless he establishes, in accordance with regulations prescribed by the Secretary or his delegate, that the provisions of the preceding sentence have been complied with both with respect to the person who placed the laid-off wager with him and with respect to the person who placed the original wager.

(b) *Credit or refund on wagers laid-off by taxpayer.* Where any taxpayer lays off part or all of a wager with another person who is liable for tax imposed by chapter 35 on the amount so laid off, a credit against such tax shall be allowed, or a refund shall be made to, the taxpayer laying off such amount. Such credit or refund shall be in an amount which bears the same ratio to the amount of tax which such taxpayer paid on the original wager as the amount so laid off bears to the amount of the original wager. Credit or refund under this subsection shall be allowed or made only in accordance with regulations prescribed by the Secretary or his delegate; and no interest shall be allowed with respect to any amount so credited or refunded.

§ 301.6419–1 Excise tax on wagering.

For regulations under sections 6419, see §§ 44.6419–1 and 44.6419–2 of this chapter (Wagering Tax Regulations).

§ 301.6420 Statutory provisions; gasoline used on farms.

SEC. 6420. *Gasoline used on farms*—(a) *Gasoline.* If gasoline is used on a farm for farming purposes, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline the amount determined by multiplying—

(1) The number of gallons so used, by

(2) The rate of tax on gasoline under section 4081 which applied on the date he purchased such gasoline.

(b) *Time for filing claim; period covered.* Not more than one claim may be filed under this section by any person with respect to gasoline used during the one-year period ending on June 30 of any year. No claim shall be allowed under this section with respect to any one-year period unless filed on or before September 30 of the year in which such one-year period ends.

(c) *Meaning of terms.* For purposes of this section—

(1) *Use on a farm for farming purposes.* Gasoline shall be treated as used on a farm for farming purposes only if used (A) in carrying on a trade or business, (B) on a farm situated in the United States, and (C) for farming purposes.

(2) *Farm.* The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(3) *Farming purposes.* Gasoline shall be treated as used for farming purposes only if used—

(A) By the owner, tenant, or operator of a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, on a farm of which he is the owner, tenant, or operator; except that if such use is by any person other than the owner, tenant, or operator of such farm, then (i) for purposes of this subparagraph, in applying subsection (a) to this subparagraph, and for purposes of section 6416(b)(2)(G)(ii) (but not for purposes of section 4041), the owner, tenant, or operator of the farm on which gasoline or a liquid taxable under section 4041 is used shall be treated as the user and ultimate purchaser of such gasoline or liquid, and (ii) for purposes of applying section 6416(b)(2)(G)(ii), any tax paid under section 4041 in respect of a liquid used on a farm for farming purposes (within the meaning of this subparagraph) shall be treated as having been paid by the owner, tenant, or operator of the farm on which such liquid is used;

(B) By the owner, tenant, or operator of a farm, in handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state; but only if such owner, tenant, or operator produced more than one-half of the commodity which he so treated during the period with respect to which claim is filed;

(C) By the owner, tenant, or operator of a farm, in connection with—

(i) The planting, cultivating, caring for, or cutting of trees, or

(ii) The preparation (other than milling) of trees for market,

incidental to farming operations; or

(D) by the owner, tenant, or operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment.

(4) *Gasoline.* The term "gasoline" has the meaning given to such term by section 4082(b).

(d) *Exempt sales; other payments or refunds available.* No amount shall be paid under this section with respect to any gasoline which the Secretary or his delegate determines was exempt from the tax imposed by section 4081. The amount which (but for this sentence) would be payable under this section with respect to any gasoline shall be reduced by any other amount which the Secretary or his delegate determines is payable under this section, or is refundable under any provision of this title, to any person with respect to such gasoline.

(e) *Applicable laws*—(1) *In general.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) *Examination of books and witnesses.* For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary or his delegate shall have the authority granted by paragraphs (1), (2), and (3) of section 7602 (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(3) *Fractional parts of a dollar.* Section 7504 (granting the Secretary discretion with

respect to fractional parts of a dollar) shall not apply.

(f) *Regulations.* The Secretary or his delegate may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

(g) *Effective date.* This section shall apply only with respect to gasoline purchased after December 31, 1955.

(h) *Cross references.* (1) For exemption from tax in case of diesel fuel and special motor fuels used on a farm for farming purposes, see section 4041 (d).

(2) For civil penalty for excessive claim under this section, see section 6675.

(3) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

[Sec. 6420 as added by sec. 1, Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 87), and as amended by sec. 163(d)(2), Excise Tax Technical Changes Act 1958 (72 Stat. 1311)]

§ 301.6420–1 Gasoline used on farms.

For regulations under section 6420, see §§ 48.6420(a)–1 to 48.6420(h)–1, inclusive, of this chapter (Manufacturers and Retailers Excise Tax Regulations).

§ 301.6421 Statutory provisions; gasoline used for certain nonhighway purposes or by local transit systems.

SEC. 6421. *Gasoline used for certain nonhighway purposes or by local transit systems*—(a) *Nonhighway uses.* If gasoline is used otherwise than as a fuel in a highway vehicle (1) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (2) which, in the case of a highway vehicle owned by the United States, is used on the highway, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to 1 cent for each gallon of gasoline so used on which tax was paid at the rate of 3 cents a gallon and 2 cents for each gallon of gasoline so used on which tax was paid at the rate of 4 cents a gallon.

(b) *Local transit systems*—(1) *Allowance.* If gasoline is used during any calendar quarter in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes, the Secretary or his delegate shall, subject to the provisions of paragraph (2), pay (without interest) to the ultimate purchaser of such gasoline the amount determined by multiplying—

(A) 1 cent for each gallon of gasoline so used on which tax was paid at the rate of 3 cents a gallon and 2 cents for each gallon of gasoline so used on which tax was paid at the rate of 4 cents a gallon, by

(B) The percentage which the ultimate purchaser's tax-exempt passenger fare revenue derived from such scheduled service during such quarter was of his total passenger fare revenue (not including the tax imposed by section 4261, relating to the tax on transportation of persons) derived from such scheduled service during such quarter.

(2) *Limitation.* Paragraph (1) shall apply in respect of gasoline used during any calendar quarter only if at least 60 percent of the total passenger fare revenue (not including the tax imposed by section 4261, relating to the tax on transportation of persons) derived during such quarter from scheduled service described in paragraph (1) by the person filing the claim was attributable to tax-exempt passenger fare revenue derived during such quarter by such person from such scheduled service.

(c) *Time for filing claims; period covered*—(1) *General rule.* Except as provided in paragraph (2), not more than one claim may be filed under subsection (a), and not more than one claim may be filed under subsection (b), by any person with respect to gasoline used during the one-year period ending on June 30 of any year. No claim shall be allowed under this paragraph with respect to any one-year period unless filed on or before September 30 of the year in which such one-year period ends.

(2) *Exception.* If $1,000 or more is payable under this section to any person with respect to gasoline used during a calendar quarter, a claim may be filed under this section by such person with respect to gasoline used during such quarter. No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed.

(d) *Definitions.* For purposes of this section—

(1) *Gasoline.* The term "gasoline" has the meaning given to such term by section 4082 (b).

(2) *Tax-exempt passenger fare revenue.* The term "tax-exempt passenger fare revenue" means revenue attributable to fares which were exempt from the tax imposed by section 4261 by reason of section 4263 (a) (relating to the exemption for commutation, travel, etc.).

(e) *Exempt sales; other payments or refunds available*—(1) *Exempt sales.* No amount shall be paid under this section with respect to any gasoline which the Secretary or his delegate determines was exempt from the tax imposed by section 4081. The amount which (but for this sentence) would be payable under this section with respect to any gasoline shall be reduced by any other amount which the Secretary or his delegate determines is payable under this section, or is refundable under any provision of this title, to any person with respect to such gasoline.

(2) *Gasoline used on farms.* This section shall not apply in respect of gasoline which was (within the meaning of paragraphs (1), (2), and (3) of section 6420 (c)) used on a farm for farming purposes.

(f) *Applicable laws*—(1) *In general.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) *Examination of books and witnesses.* For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary or his delegate shall have the authority granted by paragraphs (1), (2), and (3) of section 7602 (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(g) *Regulations.* The Secretary or his delegate may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

(h) *Effective date.* This section shall apply only with respect to gasoline purchased after June 30, 1956, and before July 1, 1972.

(i) *Cross references.* (1) For reduced rate of tax in case of diesel fuel and special motor fuels used for certain nonhighway purposes, see subsections (a) and (b) of section 4041.

(2) For partial refund of tax in case of diesel fuel and special motor fuels used for certain nonhighway purposes, see section 6416 (b)(2) (I) and (J).

(3) For partial refund of tax in case of diesel fuel and special motor fuels used by local transit systems, see section 6416(b)(2)(H).

(4) For civil penalty for excessive claims under this section, see section 6675.

(5) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

[Sec. 6421 as added by sec. 208 (c), Highway Revenue Act 1956 (70 Stat. 394), and as amended by sec. 2, act of July 25, 1956 (Pub. Law 796, 84th Cong., 70 Stat. 644); secs. 163(d)(3), 164, Excise Tax Technical Changes Act 1958 (72 Stat. 1312); sec. 201(d)(2), Federal-Aid Highway Act 1959 (73 Stat. 615)]

§ 301.6421–1 Gasoline used for certain nonhighway purposes or by local transit systems.

For regulations under section 6421, see §§ 48.6421(a)–1 to 48.6421(g)–1, inclusive, of this chapter (Manufacturers and Retailers Excise Tax Regulations).

§ 301.6422 Statutory provisions; cross references.

SEC. 6422. *Cross references.* (1) For limitations on credits and refunds, see subchapter B of chapter 66.

(2) For overpayment arising out of adjustments incident to involuntary liquidation of inventory, see section 1321.

(3) For overpayment in case of adjustments to accrued foreign taxes, see section 905 (c).

(4) For credit or refund in case of deficiency dividends paid by a personal holding company, see section 547.

(5) For refund, credit, or abatement of amounts disallowed by courts upon review of Tax Court decision, see section 7486.

(6) For abatement or refund of tax on transfers to avoid income tax, see section 1494 (b).

(7) For abatement or refund in case of tax on silver bullion, see section 4894.

(8) For overpayment in certain renegotiations of war contracts, see section 1481.

(9) For refund or redemption of stamps, see chapter 69.

(10) For abatement, credit, or refund in case of jeopardy assessments, see chapter 70.

(11) For treatment of certain overpayments as having been refunded, in connection with sale of surplus war-built vessels, see section 9 (b) (8) of the Merchant Ship Sales Act of 1946 (60 Stat. 48; 50 U. S. C. App. 1742.)

(12) For restrictions on transfers and assignments of claims against the United States, see R. S. 3477 (31 U. S. C. 203).

(13) For set-off of claims against amounts due the United States, see the act of March 3, 1875, as amended by section 13 of the act of March 3, 1933 (47 Stat. 1516; 31 U. S. C. 227).

(14) For special provisions relating to alcohol and tobacco taxes, see subtitle E.

[Sec. 6420 as renumbered 6422 by sec. 1, Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 87); sec. 208(c), Highway Revenue Act 1956 (70 Stat. 394); and as amended by sec. 204(4), Excise Tax Technical Changes Act 1958 (72 Stat. 1429)]

§ 301.6423 Statutory provisions; conditions to allowance in the case of alcohol and tobacco taxes.

SEC. 6423. *Conditions to allowance in the case of alcohol and tobacco taxes*—(a) *Conditions.* No credit or refund shall be allowed or made, in pursuance of a court decision or otherwise, of any amount paid or collected as an alcohol or tobacco tax unless the claimant establishes (under regulations prescribed by the Secretary or his delegate)—

(1) That he bore the ultimate burden of the amount claimed; or

(2) That he has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount; or

(3) That (A) the owner of the commodity furnished him the amount claimed for pay-

ment of the tax, (B) he has filed with the Secretary or his delegate the written consent of such owner to the allowance to the claimant of the credit or refund, and (C) such owner satisfies the requirements of paragraph (1) or (2).

(b) *Filing of claims.* No credit or refund of any amount to which subsection (a) applies shall be allowed or made unless a claim therefor has been filed by the person who paid the amount claimed, and, except as hereinafter provided in this subsection, unless such claim is filed after April 30, 1958, and within the time prescribed by law, and in accordance with regulations prescribed by the Secretary or his delegate. All evidence relied upon in support of such claim shall be clearly set forth and submitted with the claim. Any claimant who has on or before April 30, 1958, filed a claim for any amount to which subsection (a) applies may, if such claim was not barred from allowance on April 30, 1958, file a superseding claim after April 30, 1958, and on or before April 30, 1959, conforming to the requirements of this section and covering the amount (or any part thereof) claimed in such prior claim. No claim filed before May 1, 1958, for the credit or refund of any amount to which subsection (a) applies shall be held to constitute a claim for refund or credit within the meaning of, or for purposes of, section 7422(a); except that any claimant who instituted a suit before June 15, 1957, for recovery of any amount to which subsection (a) applies shall not be barred by this subsection from the maintenance of such suit as to any amount claimed in such suit on such date if in such suit he establishes the conditions to allowance required under subsection (a) with respect to such amount.

(c) *Period not extended.* Any suit or proceeding, with respect to any amount to which subsection (a) applies, which is barred on April 30, 1958, shall remain barred. No claim for credit or refund of any such amount which is barred from allowance on April 30, 1958, shall be allowed after such date in any amount.

(d) *Application of section.* This section shall apply only if the credit or refund is claimed on the grounds that an amount of alcohol or tobacco tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This section shall not apply to—

(1) Any claim for drawback,

(2) Any claim made in accordance with any law expressly providing for credit or refund where a commodity is withdrawn from the market, returned to bond, or lost or destroyed, and

(3) Any amount claimed with respect to a commodity which has been lost, where a suit or proceeding was instituted before June 15, 1957.

(e) *Meaning of terms.* For purposes of this section—

(1) *Alcohol or tobacco tax.* The term "alcohol or tobacco tax" means—

(A) Any tax imposed by chapter 51 (other than part II of subchapter A, relating to occupational taxes) or by chapter 52 or by any corresponding provision of prior internal revenue laws, and

(B) In the case of any commodity of a kind subject to a tax described in subparagraph (A), any tax equal to any such tax, any additional tax, or any floor stocks tax.

(2) *Tax.* The term "tax" includes a tax and an exaction denominated a "tax", and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

(3) *Ultimate burden.* The claimant shall be treated as having borne the ultimate burden of an amount of an alcohol or tobacco tax for purposes of subsection (a)(1), and the owner referred to in subsection (a)(3) shall be treated as having borne such burden for purposes of such subsection, only if—

(A) He has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,

(B) No understanding or agreement exists for any such relief or shifting, and

(C) If he has neither sold nor contracted to sell the commodities involved in such claim, he agrees that there will be no such relief or shifting, and furnishes such bond as the Secretary or his delegate may require to insure faithful compliance with his agreement.

[Sec. 6423 as added by Act of Feb. 11, 1958 (Pub. Law 85-323, 72 Stat. 8)]

§ 301.6423–1 Conditions to allowance in the case of alcohol and tobacco taxes.

For regulations under section 6423, see Part 170 of this chapter, relating to distilled spirits, wine and beer; Part 296 of this chapter, relating to tobacco materials, tobacco products, and cigarette papers and tubes; and Part 285 of this chapter, relating to cigarette papers and tubes—manufacturers and importers.

Limitations

LIMITATIONS ON ASSESSMENT AND COLLECTION

§ 301.6501(a) Statutory provisions; limitations on assessment and collection; general rule.

SEC. 6501. *Limitations on assessment and collection*—(a) *General rule.* Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

[Sec. 6501(a) as amended by sec. 165(a), Excise Tax Technical Changes Act 1958 (72 Stat. 1313)]

§ 301.6501(a)–1 Period of limitations upon assessment and collection.

(a) The amount of any tax imposed by the Code (other than a tax collected by means of stamps) shall be assessed within 3 years after the return was filed. For rules applicable in cases where the return is filed prior to the due date thereof, see section 6501(b). In the case of taxes payable by stamp, assessment shall be made at any time after the tax became due and before the expiration of 3 years after the date on which any part of the tax was paid. For exceptions and additional rules, see subsections (b) to (g) of section 6501, and for cross references to other provisions relating to limitations on assessment and collection, see sections 6501(h) and 6504.

(b) No proceeding in court without assessment for the collection of any tax shall be begun after the expiration of the applicable period for the assessment of such tax.

§ 301.6501(b) Statutory provisions; limitations on assessment and collection; time return deemed filed.

SEC. 6501. *Limitations on assessment and collection.* * * *

(b) *Time return deemed filed*—(1) *Early return.* For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 21 or 24, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

(2) *Return of certain employment taxes.* For purposes of this section, if a return of tax imposed by chapter 21 or 24 for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such calendar year.

(3) *Return executed by Secretary.* Notwithstanding the provisions of paragraph (2) of section 6020 (b), the execution of a return by the Secretary or his delegate pursuant to the authority conferred by such section shall not start the running of the period of limitations on assessment and collection.

§ 301.6501(b)–1 Time return deemed filed for purposes of determining limitations.

(a) *Early return.* Any return, other than employment tax returns referred to in paragraph (b) of this section, filed prior to the last day prescribed by law or regulations for the filing thereof (determined without regard to any extension of time for filing) shall be considered as filed on such last day.

(b) *Returns of social security tax and of income tax withholding.* If a return of tax under chapter 21 of the Code (relating to the Federal Insurance Contributions Act) or chapter 24 of the Code (relating to the collection of income tax at source on wages) for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be deemed filed on April 15 of such succeeding calendar year. For example, if quarterly returns are filed for the four quarters of 1955 on April 30, July 31, and October 31, 1955, and on January 31, 1956, the period of limitation for assessment with respect to the tax required to be reported on such returns is measured from April 15, 1956. However, if any of such returns is filed after April 15, 1956, the period of limitation for assessment of the tax required to be reported on that return is measured from the date it is in fact filed.

(c) *Returns executed by district directors or other internal revenue officers.* The execution of a return by a district director or other authorized internal revenue officer or employee under the authority of section 6020 (b) shall not start the running of the statutory period of limitations on assessment and collection.

§ 301.6501(c) Statutory provisions; limitations on assessment and collection; exceptions.

SEC. 6501. *Limitations on assessment and collection.* * * *

(c) *Exceptions*—(1) *False return.* In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(2) *Willful attempt to evade tax.* In case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the

collection of such tax may be begun without assessment, at any time.

(3) *No return.* In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(4) *Extension by agreement.* Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary or his delegate and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(5) *Tax resulting from changes in certain income tax or estate tax credits.* For special rules applicable in cases where the adjustment of certain taxes allowed as a credit against income taxes or estate taxes results in additional tax, see section 905 (c) (relating to the foreign tax credit for income tax purposes) and section 2016 (relating to taxes of foreign countries, States, etc., claimed as credit against estate taxes).

(6) *Tax resulting from certain distributions or from termination as life insurance company.* In the case of any tax imposed under section 802(a)(1) by reason of section 802(b)(3) on account of a termination of the taxpayer as an insurance company or as a life insurance company to which section 815(d)(2)(A) applies, or on account of a distribution by the taxpayer to which section 815(d)(2)(B) applies, such tax may be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) for the taxable year for which the taxpayer ceases to be an insurance company, the second taxable year for which the taxpayer is not a life insurance company, or the taxable year in which the distribution is actually made, as the case may be.

[Sec. 6501(c) as amended by sec. 3(g), Life Insurance Company Income Tax Act 1959 (73 Stat. 140)]

§ 301.6501(c)–1 Exceptions to general period of limitations on assessment and collection.

(a) *False return.* In the case of a false or fraudulent return with intent to evade any tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after such false or fraudulent return is filed.

(b) *Willful attempt to evade tax.* In the case of a willful attempt in any manner to defeat or evade any tax imposed by the Code (other than a tax imposed by subtitle A or B, relating to income, estate, or gift taxes), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) *No return.* In the case of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after the date prescribed for filing the return.

(d) *Extension by agreement.* The time prescribed by section 6501 for the assessment of any tax (other than the estate tax imposed by chapter 11 of the Code) may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the taxpayer and the district director or an assistant regional commissioner. The extension shall become effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

§ 301.6501(d) Statutory provisions; limitations on assessment and collection; request for prompt assessment.

SEC. 6501. *Limitations on assessment and collection.* * * *

(d) *Request for prompt assessment.* Except as otherwise provided in subsection (c), (e), or (f), in the case of any tax (other than the tax imposed by chapter 11 of subtitle B, relating to estate taxes) for which return is required in the case of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after written request therefor (filed after the return is made and filed in such manner and such form as may be prescribed by regulations of the Secretary or his delegate) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of 3 years after the return was filed. This subsection shall not apply in the case of a corporation unless—

(1)(A) such written request notifies the Secretary or his delegate that the corporation contemplates dissolution at or before the expiration of such 18-month period, (B) the dissolution is in good faith begun before the expiration of such 18-month period, and (C) the dissolution is completed;

(2) (A) such written request notifies the Secretary or his delegate that a dissolution has in good faith been begun, and (B) the dissolution is completed; or

(3) a dissolution has been completed at the time such written request is made.

[Sec. 6501(d) as amended by sec. 80, Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.6501(d)–1 Request for prompt assessment.

(a) Except as otherwise provided in section 6501 (c), (e), or (f), any tax for which a return is required and for which:

(1) A decedent or an estate of a decedent may be liable, other than the estate tax imposed by chapter 11 of the Code, or

(2) A corporation which is contemplating dissolution, is in the process of dissolution, or has been dissolved, may be liable,

shall be assessed, or a proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after the receipt of a written request for prompt assessment thereof.

(b) The executor, administrator, or other fiduciary representing the estate of the decedent, or the corporation, or the fiduciary representing the dissolved corporation, as the case may be, shall, after the return in question has been filed, file the request for prompt assessment in writing with the district director for the internal revenue district in which such return was filed. The request, in order to be effective, must be transmitted separately from any other document, must set forth the classes of tax and the taxable periods for which the prompt assessment is requested, and must clearly indicate that it is a request for prompt assessment under the provisions of section 6501 (d). The effect of such a request is to limit the time in which an assessment of tax may be made, or a proceeding in court without assessment for collection of tax may be begun, to a period of 18 months from the date the request is filed with the proper district director. The request does not extend the time within which an assessment may be made, or a proceeding in court without assessment may be begun, beyond 3 years from the date the return was filed. This special period of limitations will not apply to any return filed after a request for prompt assessment has been made unless an additional request is filed in the manner provided herein.

(c) In the case of a corporation the 18-month period shall not apply unless:

(1) The written request notifies the district director that the corporation contemplates dissolution at or before the expiration of such 18-month period; the dissolution is in good faith begun before the expiration of such 18-month period; and the dissolution so begun is completed either before or after the expiration of such 18-month period; or

(2) The written request notifies the district director that a dissolution has in good faith been begun, and the dissolution is completed either before or after the expiration of such 18-month period; or

(3) A dissolution has been completed at the time the written request is made.

§ 301.6501(e) Statutory provisions; limitations on assessments and collection; omission from gross income.

SEC. 6501. *Limitations on assessment and collection.* * * *

(e) *Omission from gross income.* Except as otherwise provided in subsection (c)—

(1) *Income taxes.* In the case of any tax imposed by subtitle A—

(A) *General rule.* If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. For purposes of this subparagraph—

(i) In the case of a trade or business, the term "gross income" means the total of the amounts received or accrued from the sale of goods or services (if such amounts are required to be shown on the return) prior to diminution by the cost of such sales or services; and

(ii) In determining the amount omitted from gross income, there shall not be taken into account any amount which is omitted from gross income stated in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary or his delegate of the nature and amount of such item.

(B) *Constructive dividends.* If the taxpayer omits from gross income an amount properly includible therein under section 551 (b) (relating to the inclusion in the gross income of United States shareholders of their distributive shares of the undistributed foreign personal holding company income), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(2) *Estate and gift taxes.* In the case of a return of estate tax under chapter 11 or a return of gift tax under chapter 12, if the taxpayer omits from the gross estate or from the total amount of the gifts made during the year items includible in such gross estate or such total gifts, as the case may be, as exceed in amount 25 percent of the gross estate stated in the return or the total amount of gifts stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. In determining the items omitted from the gross estate or the total gifts, there shall not be taken into account any item which is omitted from the gross estate or from the total gifts stated in the return if such item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary or his delegate of the nature and amount of such item.

§ 301.6501(e)–1 Omission from return.

(a) *Income taxes*—(1) *General rule.* (i) If the taxpayer omits from the gross income stated in the return of a tax imposed by subtitle A of the Code an amount properly includible therein which is in excess of 25 percent of the gross income so stated, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(ii) For purposes of this subparagraph, the term "gross income", as it relates to a trade or business, means the total of the amounts received or accrued from the sale of goods or services, to the extent required to be shown on the return, without reduction for the cost of such sales or services. An item shall not be considered as omitted from gross income if information, sufficient to apprise the district director of the nature and amount of such item, is disclosed in the return or in any schedule or statement attached to the return.

(2) *Constructive dividends.* If a taxpayer omits from gross income an amount properly includible therein under section 551 (b) as his distributive share of the undistributed foreign personal holding company income, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(b) *Estate and gift taxes.* (1) If the taxpayer omits from the gross estate as stated in the estate tax return, or from the total amount of the gifts made during the year as stated in the gift tax return, an item or items properly includible therein the amount of which is in excess of 25 percent of the gross estate as stated in the return, or 25 percent of the total amount of the gifts as stated in the return, the tax may be assessed, or a proceeding in court for the collection thereof may be begun without assessment, at any time within 6 years after the return was filed.

(2) For purposes of this paragraph, an item disclosed in the return or in any schedule or statement attached to the return in a manner sufficient to apprise the district director of the nature and amount thereof shall not be taken into account in determining items omitted from the gross estate or total gifts, as the case may be. Further, there shall not be taken into account in computing the 25 percent omission from the gross estate stated in the estate tax return or from the total gifts stated in the gift tax return, any increases in the valuation of assets disclosed on the return.

(c) *Exception.* The provisions of this section do not limit the application of section 6501 (c).

§ 301.6501(f) Statutory provisions; limitations on assessment and collection; personal holding company tax.

SEC. 6501. *Limitations on assessment and collection.* * * *

(f) *Personal holding company tax.* If a corporation which is a personal holding company for any taxable year fails to file with its return under chapter 1 for such year a schedule setting forth—

(1) The items of gross income, described in section 543 (a), received by the corporation during such year, and

(2) The names and addresses of the individuals who owned, within the meaning of section 544 (relating to rules for determining stock ownership), at any time during the last half of such year more than 50 percent in value of the outstanding capital stock of the corporation,

the personal holding company tax for such year may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return for such year was filed.

§ 301.6501(f)–1 Personal holding company tax.

If a corporation which is a personal holding company for any taxable year fails to file with its income tax return for such year a schedule setting forth the items of gross income described in section 543(a) received by the corporation during such year, and the names and addresses of the individuals who owned, within the meaning of section 544, at any time during the last half of such taxable year, more than 50 percent in value of the outstanding capital stock of the corporation, the personal holding company tax for such year may be assessed, or a proceeding in court for the collection thereof may be begun without assessment, at any time within 6 years after the return for such year was filed.

§ 301.6501(g) Statutory provisions; limitations on assessment and collection; certain income tax returns of corporations.

SEC. 6501. *Limitations on assessment and collection.* * * *

(g) *Certain income tax returns of corporations*—(1) *Trusts or partnerships.* If a taxpayer determines in good faith that it is a trust or partnership and files a return as such under subtitle A, and if such taxpayer is thereafter held to be a corporation for the taxable year for which the return is filed, such return shall be deemed the return of the corporation for purposes of this section.

(2) *Exempt organizations.* If a taxpayer determines in good faith that it is an exempt organization and files a return as such under section 6033, and if such taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, such return shall be deemed the return of the organization for purposes of this section.

[Sec. 6501(g) as amended by sec. 81(a), Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.6501(g)–1 Certain income tax returns of corporations.

(a) *Trusts or partnerships.* If a taxpayer determines in good faith that it is a trust or partnership and files a return as such under subtitle A of the Code, and if the taxpayer is later held to be a corporation for the taxable year for which the return was filed, such return shall be deemed to be the return of the corporation for the purpose of section 6501.

(b) *Exempt organizations.* If a taxpayer determines in good faith that it is an exempt organization and files a return as such under section 6033, and if the taxpayer is later held to be a taxable organization for the taxable year for which the return was filed, such return shall be deemed to be the return of the organization for the purpose of section 6501.

§ 301.6501(h) Statutory provisions; limitations on assessment and collection; net operating loss carrybacks.

SEC. 6501. *Limitations on assessment and collection.* * * *

(h) *Net operating loss carrybacks.* In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss which results in such carryback may be assessed.

[Sec. 6501(h) as added by sec. 81(b), Technical Amendments Act 1958 (72 Stat. 1663)]

§ 301.6501(h)–1 Net operating loss carrybacks.

In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213 (b)(2)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss which results in such carryback may be assessed.

§ 301.6501(i) Statutory provisions; limitations on assessment and collection; joint income return after separate return.

SEC. 6501. *Limitations on assessment and collection.* * * *

(i) *Joint income return after separate return.* For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4).

[Sec. 6501(i) as redesignated by sec. 81(b), Technical Amendments Act 1958 (72 Stat. 1663)]

§ 301.6502 Statutory provisions; collection after assessment.

SEC. 6502. *Collection after assessment*—(a) *Length of period.* Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—

(1) Within 6 years after the assessment of the tax, or

(2) Prior to the expiration of any period for collection agreed upon in writing by the Secretary or his delegate and the taxpayer before the expiration of such 6-year period (or, if there is a release of levy under section 6343 after such 6-year period, then before such release).

The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(b) *Date when levy is considered made.* The date on which a levy on property or rights to property is made shall be the date on which the notice of seizure provided in section 6335 (a) is given.

§ 301.6502–1 Collection after assessment.

(a) *Length of period*—(1) *General rule.* In any case in which a tax has been assessed within the statutory period of limitation properly applicable thereto, a proceeding in court to collect such tax may be begun, or levy for the collection of such tax may be made, within 6 years after the assessment thereof.

(2) *Extension by agreement.* (i) The 6-year period of limitation on collection after assessment of any tax may, prior to the expiration thereof, be extended for any period of time agreed upon in writing by the taxpayer and the district director. The extension shall become effective upon execution of the agreement by both the taxpayer and the district director.

(ii) The period of limitation on collection after assessment of any tax (including any extension of such period) may be extended after the expiration thereof if there has been a levy on any part of the taxpayer's property prior to such expiration and if the extension is agreed upon in writing prior to a release of the levy under the provisions of section 6343. An extension under this subdivision has the same effect as an agreement made prior to the expiration of the period of limitation on collection after assessment, and during the period of the extension collection may be enforced as to all property or rights to property owned by the taxpayer whether or not seized under the levy which was released.

(iii) Any period agreed upon under the provisions of this subparagraph may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(b) *Date when levy is considered made.* The date on which a levy on property or rights to property is made is the date on which the notice of seizure provided in section 6335 (a) is given.

§ 301.6503(a) Statutory provisions; suspension of running of period of limitation; issuance of statutory notice of deficiency.

SEC. 6503. *Suspension of running of period of limitation*—(a) *Issuance of statutory notice of deficiency*—(1) *General rule.* The running of the period of limitations provided in section 6501 or 6502 on the making of assessments or the collection by levy or a proceeding in court, in respect of any deficiency as defined in section 6211 (relating to income, estate, and gift taxes), shall (after the mailing of a notice under section 6212 (a)) be suspended for the period during which the Secretary or his delegate is prohibited from making the assessment or from collecting by levy or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(2) *Corporation joining in consolidated income tax return.* If a notice under section 6212 (a) in respect of a deficiency in tax imposed by subtitle A for any taxable year is mailed to a corporation, the suspension of the running of the period of limitations provided in paragraph (1) of this subsection shall apply in the case of corporations with which such corporation made a consolidated income tax return for such taxable year.

§ 301.6503(a)–1 Suspension of running of period of limitation; issuance of statutory notice of deficiency.

(a) *General rule.* Upon the mailing of a notice of deficiency for income, estate, or gift tax under the provisions of section 6212, the period of limitation on assessment and collection of any deficiency is suspended for 90 days if the notice of deficiency is addressed to a person within the States of the Union and the District of Columbia, or 150 days if such notice is addressed to a person outside the States of the Union and the District of Columbia (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th or 150th day), plus an additional 60 days thereafter in either case. If a proceeding in respect of the deficiency is placed on the docket of the Tax Court, the period of limitation is suspended until the decision of the Tax Court becomes final, and for an additional 60 days thereafter. If a notice of deficiency is mailed to a taxpayer within the period of limitation and the taxpayer does not appeal therefrom to the Tax Court, the notice of deficiency so given does not suspend the running of the period of limitation with respect to any additional deficiency shown to be due in a subsequent deficiency notice.

Example. A taxpayer filed a return for the calendar year 1954 on April 15, 1955; the notice of deficiency was mailed to him (at an address within the United States) on April 15, 1958; and he filed a petition with the Tax Court on July 14, 1958. The decision of the Tax Court became final on November 6, 1959. The running of the period of limitation for assessment is suspended from April 15, 1958 to January 5, 1960, which date is 60 days after the date (November 6, 1959) on which the decision became final. If in this example the taxpayer had failed to file a petition with the Tax Court, the running of the period of limitation for assessment would then be suspended from April 15, 1958 (the date of notice), to September 12, 1958 (that is, for the 90-day period in which he could file a petition with the Tax Court, and for 60 days thereafter).

(b) *Corporations joining in consolidated return.* If a notice under section 6212 (a) with respect to a deficiency in tax imposed by subtitle A of the Code for any taxable year is mailed to a corporation, the suspension of the running of the period of limitation provided in section 6503(a)(1) shall apply in the case of corporations with which such corporation made a consolidated income tax return for such taxable year. Under § 1.1502–16 of this chapter (Income Tax Regulations), relating to consolidated returns, notices of deficiency are mailed only to the common parent.

§ 301.6503(b) Statutory provisions; suspension of running of period of limitation; assets of taxpayer in control or custody of court.

SEC. 6503. *Suspension of running of period of limitation.* * * *

(b) *Assets of taxpayer in control or custody of court.* The period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period the assets of the taxpayer (other than the estate of a decedent or of an incompetent) are in the control or custody of the court in any proceeding before any court of the United States or of any State or Territory or of the District of Columbia, and for 6 months thereafter.

§ 301.6503(b)–1 Suspension of running of period of limitation; assets of taxpayer in control or custody of court.

Where the assets of a taxpayer (other than the estate of a decedent or of an incompetent) are in the control or custody of the court in any proceeding before any court of the United States or of any State or Territory of the United States or of the District of Columbia, the period of limitation on collection after assessment prescribed in section 6502 is suspended for the period such assets are in the control or custody of the court, and for 6 months thereafter.

§ 301.6503(c) Statutory provisions; suspension of running of period of limitation; location of property outside the United States or removal of property from the United States.

SEC. 6503. *Suspension of running of period of limitation.* * * *

(c) *Location of property outside the United States or removal of property from the United States.* In case collection is hindered or delayed because property of the taxpayer is situated or held outside the United States or is removed from the United States, the period of limitations on collection after assessment prescribed in section 6502 shall be suspended for the period collection is so hindered or delayed. The total suspension of time under this subsection shall not in the aggregate exceed 6 years.

§ 301.6503(c)–1 Suspension of running of period of limitation; location of property outside the United States or removal of property from the United States.

The running of the period of limitation on collection after assessment prescribed in section 6502 is suspended for the period of time that collection is hindered or delayed because property of the taxpayer is situated or held outside the United States or is removed from the United States. The total suspension of time under this provision shall not in the aggregate exceed 6 years. In any case in which the district director determines that collection is so hindered or delayed, he shall make and retain in the files of his office a written report which shall identify the taxpayer and the tax liability, shall show what steps were taken to collect the tax liability, shall state the grounds for his determination that property of the taxpayer is situated or held outside, or is removed from, the United States, and shall show the date on which

it was first determined that collection was so hindered or delayed. The term "property" includes all property or rights to property, real or personal, tangible or intangible, belonging to the taxpayer. The suspension of the running of the period of limitation on collection shall be considered to begin on the date so determined by the district director. A copy of the report shall be mailed to the taxpayer at his last known address.

§ 301.6503(d) Statutory provisions; suspension of running of period of limitation; extensions of time for payment of estate tax.

SEC. 6503. *Suspension of running of period of limitation.* * * *

(d) *Extensions of time for payment of estate tax.* The running of the period of limitations for collection of any tax imposed by chapter 11 shall be suspended for the period of any extension of time for payment granted under the provisions of section 6161 (a)(2) or (b)(2) or under the provisions of section 6166.

[Sec. 6503(d) as amended by sec. 206(d), Small Business Tax Revision Act 1958 (72 Stat. 1685)]

§ 301.6503(d)–1 Suspension of running of period of limitation; extension of time for payment of estate tax.

Where an estate is granted an extension of time as provided in section 6161 (a)(2) or (b)(2), or under the provisions of section 6166, for payment of any estate tax, the running of the period of limitations for collection of such tax is suspended for the period of time for which the extension is granted.

§ 301.6503(e) Statutory provisions; suspension of running of period of limitation; certain powers of appointment.

SEC. 6503. *Suspension of running of period of limitation.* * * *

(e) *Certain powers of appointment.* The running of the period of limitations for assessment or collection of any tax imposed by chapter 11 shall be suspended in respect of the estate of a decedent claiming a deduction under section 2055 (b) (2) until 30 days after the expiration of the period for assessment or collection of the tax imposed by chapter 11 on the estate of the surviving spouse.

[Sec. 6503 (e) as added by sec. 2, Act of Aug. 6, 1956 (Pub. Law 1011, 84th Cong., 70 Stat. 1075)]

§ 301.6503(e)–1 Suspension of running of period of limitation; certain powers of appointment.

Where the estate of a decedent is allowed an estate tax charitable deduction under the provisions of section 2055 (b)(2) (with respect to property over which the decedent's surviving spouse was given a power of appointment exercisable in favor of charitable organizations) subject to the later disallowance of the deduction if all conditions set forth in section 2055(b)(2) are not complied with, the running of the period of limitation for assessment or collection of any estate tax imposed on the decedent's estate is suspended until 30 days after the expiration of the period for assessment or collection of the estate tax imposed on the estate of the decedent's surviving spouse.

§ 301.6503(f) Statutory provisions; suspension of running of period of limitation; cross references.

SEC. 6503. *Suspension of running of period of limitation.* * * *

(f) *Cross references.* For suspension in case of—

(1) Deficiency dividends of a personal holding company, see section 547 (f).

(2) Bankruptcy and receiverships, see subchapter B of chapter 70.

(3) Claims against transferees and fiduciaries, see chapter 71.

[Sec. 6503(f) as redesignated by sec. 2, Act of Aug. 6, 1956 (Pub. Law 1011, 84th Cong., 70 Stat. 1075)]

§ 301.6504 Statutory provisions; cross references.

SEC. 6504. *Cross references.* For limitation period in case of—

(1) Adjustments incident to involuntary liquidation of inventory, see section 1321.

(2) Adjustments to accrued foreign taxes, see section 905 (c).

(3) Change of election to take standard deduction where taxpayer and his spouse make separate returns, see section 144 (b).

(4) Involuntary conversion of property, see section 1033 (a) (3) (C) and (D).

(5) Gain upon sale or exchange of residence, see section 1034 (j).

(6) War loss recoveries where prior benefit rule is elected, see section 1335.

(7) Recovery of unconstitutional Federal taxes, see section 1346.

(8) Limitations on deductions allowable to individuals in certain cases, see section 270 (d).

(9) Application by executor for discharge from personal liability for estate tax, see section 2204.

(10) Insolvent banks and trust companies, see section 7507.

(11) Service in a combat zone, etc., see section 7508.

(12) Claims against transferees and fiduciaries, see chapter 71.

(13) Assessments to recover excessive amounts paid under section 6420 (relating to gasoline used on farms) and assessments of civil penalties under section 6675 for excessive claims under section 6420, see section 6206.

(14) Assessments to recover excessive amounts paid under section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems) and assessments of civil penalties under section 6675 for excessive claims under section 6421, see section 6206.

(15) Assessment and collection of interest, see section 6601(h).

[Sec. 6504 as amended by sec. 4(d), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 91); sec. 208(e)(5), Highway Revenue Act 1956 (70 Stat. 397); sec. 84(b), Technical Amendments Act 1958 (72 Stat. 1664)]

LIMITATIONS ON CREDIT OR REFUND

§ 301.6511(a) Statutory provisions; limitations on credit or refund; period of limitation on filing claim.

SEC. 6511. *Limitations on credit or refund*—(a) *Period of limitation on filing claim.* Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

[Sec. 6511(a) as amended by sec. 82(a), Technical Amendments Act 1958 (72 Stat. 1663)]

§ 301.6511(a)–1 Period of limitation on filing claim.

(a) In the case of any tax (other than a tax payable by stamp):

(1) If a return is filed, a claim for credit or refund of an overpayment must be filed by the taxpayer within 3 years from the time the return was filed or within 2 years from the time the tax was paid, whichever of such periods expires the later.

(2) If no return is filed, the claim for credit or refund of an overpayment must be filed by the taxpayer within 2 years from the time the tax was paid.

(b) In the case of any tax payable by means of a stamp, a claim for credit or refund of an overpayment of such tax must be filed by the taxpayer within 3 years from the time the tax was paid. For provisions relating to redemption of unused stamps, see section 6805.

(c) For limitations on allowance of credit or refund, special rules, and exceptions, see subsections (b) through (e) of section 6511. For limitations in the case of a petition to the Tax Court, see section 6512. For rules as to time return is deemed filed and tax considered paid, see section 6513.

§ 301.6511(b) Statutory provisions; limitations on credit or refund; limitation on allowance of credits and refunds.

SEC. 6511. *Limitations on credit or refund.* * * *

(b) *Limitation on allowance of credits and refunds*—(1) *Filing of claim within prescribed period.* No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(2) *Limit on amount of credit or refund*—(A) *Limit where claim filed within 3-year period.* If the claim was filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(B) *Limit where claim not filed within 3-year period.* If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.

(C) *Limit if no claim filed.* If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under subparagraph (A) or (B), as the case may be, if claim was filed on the date the credit or refund is allowed.

[Sec. 6511(b)(2) as amended by sec. 82(b), (c), Technical Amendments Act 1958 (72 Stat. 1663)]

§ 301.6511(b)–1 Limitations on allowance of credits and refunds.

(a) *Effect of filing claim.* Unless a claim for credit or refund of an overpayment is filed within the period of limitation prescribed in section 6511(a), no credit or refund shall be allowed or made after the expiration of such period.

(b) *Limit on amount to be credited or refunded.* (1) In the case of any tax (other than a tax payable by stamp):

(i) If a return was filed, and a claim is filed within 3 years from the time the return was filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return.

(ii) If a return was filed, and a claim is filed after the 3-year period described in subdivision (i) of this subparagraph but within 2 years from the time the tax was paid, the amount of the credit or refund shall not exceed the portion of the tax paid within the 2 years immediately preceding the filing of the claim.

(iii) If no return was filed, but a claim is filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the 2 years immediately preceding the filing of the claim.

(iv) If no claim is filed, the amount of the credit or refund allowed or made by the district director shall not exceed the amount that would have been allowable under the preceding subdivisions of this subparagraph if a claim had been filed on the date the credit or refund is allowed.

(2) In the case of a tax payable by stamp:

(i) If a claim is filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(ii) If no claim is filed, the amount of the credit or refund allowed or made by the district director shall not exceed the portion of the tax paid within the 3 years immediately preceding the allowance of the credit or refund.

For provisions relating to redemption of unused stamps, see section 6805.

§ 301.6511(c) Statutory provisions; limitations on credit or refund; special rules applicable in case of extension of time by agreement.

SEC. 6511. *Limitations on credit or refund.* * * *

(c) *Special rules applicable in case of extension of time by agreement.* If an agreement under the provisions of section 6501 (c) (4) extending the period for assessment of a tax imposed by this title is made within the period prescribed in subsection (a) for the filing of a claim for credit or refund—

(1) *Time for filing claim.* The period for filing claim for credit or refund or for making credit or refund if no claim is filed, provided in subsections (a) and (b) (1), shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under section 6501 (c) (4).

(2) *Limit on amount.* If a claim is filed, or a credit or refund is allowed when no claim was filed, after the execution of the agreement and within 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof, the amount of the credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subsection (b) (2) if a claim had been filed on the date the agreement was executed.

(3) *Claims not subject to special rule.* This subsection shall not apply in the case of a claim filed, or credit or refund allowed if no claim is filed, either—

(A) Prior to the execution of the agreement or

(B) More than 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

§ 301.6511(c)–1 Special rules applicable in case of extension of time by agreement.

(a) *Scope.* If, within the period prescribed in section 6511(a) for the filing of a claim for credit or refund, an agreement extending the period for assessment of a tax has been made in accordance with the provisions of section 6501 (c) (4), the special rules provided in this section become applicable. This section shall not apply to any claim filed, or credit or refund allowed if no claim is filed, either (1) prior to the execution of an agreement extending the period in which assessment may be made, or (2) more than 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(b) *Period in which claim may be filed.* Claim for credit or refund of an overpayment may be filed, or credit or refund may be allowed if no claim is filed, at any time within which an assessment may be made pursuant to an agreement, or any extension thereof, under section 6501 (c) (4), and for 6 months thereafter.

(c) *Limit on amount to be credited or refunded.* (1) If a claim is filed within the time prescribed in paragraph (b) of this section, the amount of the credit or refund allowed or made shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim, plus the amount that could have been properly credited or refunded under the provisions of section 6511 (b) (2) if a claim had been filed on the date of the execution of the agreement.

(2) If no claim is filed, the amount of credit or refund allowed or made within the time prescribed in paragraph (b) of this section shall not exceed the portion of the tax paid after the execution of the agreement and before the making of the credit or refund, plus the amount that could have been properly credited or refunded under the provisions of section 6511 (b) (2) if a claim had been filed on the date of the execution of the agreement.

(d) *Effective date of agreement.* The agreement referred to in this section shall become effective when signed by the taxpayer and the district director or an assistant regional commissioner.

§ 301.6511(d) Statutory provisions; limitations on credit or refund; special rules applicable to income taxes.

SEC. 6511. *Limitations on credit or refund.* * * * (d) *Special rules applicable to income taxes*—(1) *Seven-year period of limitation with respect to bad debts and worthless securities.* If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of—

(A) The deductibility by the taxpayer, under section 166 or section 832 (c), of a debt as a debt which became worthless, or, under section 165 (g), of a loss from worthlessness of a security, or

(B) The effect that the deductibility of a debt or loss described in subparagraph (A) has on the application to the taxpayer of a carryover,

in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 7 years from the date prescribed by law for filing the return for the year with respect to which the claim is made. If the claim for credit or refund relates to an overpayment on account of the effect that the deductibility of such a debt or loss has on the application to the taxpayer of a carryback, the period shall be either 7 years from the date prescribed by law for filing the return for the year of the net operating loss which results in such carryback or the period prescribed in paragraph (2) of this subsection, whichever expires the later. In the case of a claim described in this paragraph the amount of the credit or refund may exceed the portion of the tax paid within the period prescribed in subsection (b) (2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of items described in this paragraph.

(2) *Special period of limitation with respect to net operating loss carrybacks*—(A) *Period of limitation.* If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of the taxable year of the net operating loss which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later; except that, with respect to an overpayment attributable to the creation of or an increase in a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before September 1, 1959, or the expiration of the twelfth month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is the later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback.

(B) *Applicable rules.* If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. If the allowance of an application, credit, or refund of a decrease in tax determined under section 6411 (b) is otherwise prevented by the operation of any law or rule of law other than section 7122, such application, credit,

or refund may be allowed or made if application for a tentative carryback adjustment is made within the period provided in section 6411 (a). In the case of any such claim for credit or refund or any such application for a tentative carryback adjustment, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the net operating loss deduction, and the effect of such deduction, to the extent that such deduction is affected by a carryback which was not in issue in such proceeding.

(3) *Special rules relating to foreign tax credit*—(A) *Special period of limitation with respect to foreign taxes paid or accrued.* If the claim for credit or refund relates to an overpayment attributable to any taxes paid or accrued to any foreign country or to any possession of the United States for which credit is allowed against the tax imposed by subtitle A in accordance with the provisions of section 901 or the provisions of any treaty to which the United States is a party, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be 10 years from the date prescribed by law for filing the return for the year with respect to which the claim is made.

(B) *Exception in the case of foreign taxes paid or accrued.* In the case of a claim described in subparagraph (A), the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the allowance of a credit for the taxes described in subparagraph (A).

[Sec. 6511(d) as amended by sec. 82(d), Technical Amendments Act 1958 (72 Stat. 1663); sec. 1(a), Act of Sept. 16, 1959 (Pub. Law 86-280, 73 Stat. 563)]

§ 301.6511(d)-1 Overpayment of income tax on account of bad debts, worthless securities, etc.

(a)(1) If the claim for credit or refund relates to an overpayment of income tax on account of—

(i) The deductibility by the taxpayer, under section 166 or section 832 (c), of a debt as a debt which became worthless, or, under section 165 (g), of a loss from the worthlessness of a security, or

(ii) The effect that the deductibility of a debt or loss described in subdivision (i) of this subparagraph has on the application to the taxpayer of a carryover, then in lieu of the 3-year period from the time the return was filed in which claim may be filed or credit or refund allowed, as prescribed in section 6511 (a) or (b), the period shall be 7 years from the date prescribed by law for filing the return (determined without regard to any extension of time for filing such return) for the taxable year for which the claim is made or the credit or refund allowed or made.

(2) If the claim for credit or refund relates to an overpayment on account of the effect that the deductibility of a debt or loss, described in subparagraph (1) of this paragraph, has on the application to the taxpayer of a net operating loss carryback provided in section 172 (b), the period in which claim for credit or refund may be filed shall be whichever of the following two periods expires later:

(i) Seven years from the last date prescribed for filing the return (determined without regard to any extension of time for filing such return) for the taxable year of the net operating loss which results in such carryback, or

(ii) The period which ends with the expiration of the period prescribed in section 6511 (c) within which a claim for credit or refund may be filed with respect to the taxable year of the net operating loss which resulted in the carryback.

(3) In the case of a claim for credit or refund involving items described in this section, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 6511 (b) (2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of items described in subparagraph (1) of this paragraph. If the claim involves an overpayment based not only on the deductibility of items described in subparagraph (1) of this paragraph but based also on other items, the credit or refund cannot exceed the sum of the following:

(i) The amount of the overpayment which is attributable to the deductibility of items described in subparagraph (1) of this paragraph, and

(ii) The balance of such overpayment up to a limit of the portion, if any, of the tax paid within the period provided in section 6511 (b) (2) or (c), or within the period provided in any other applicable provision of law.

(4) If the claim involves an overpayment based not only on the deductibility of items described in subparagraph (1) of this paragraph but based also on other items, and if the claim with respect to any items is barred by the expiration of any applicable period of limitation, the portion of the overpayment attributable to the items not so barred shall be determined by treating the allowance of such items as the first adjustment to be made in computing such overpayment.

(b) If a claim for credit or refund is not filed within the applicable period described in paragraph (a) of this section, then credit or refund may be allowed or made only if claim therefor is filed or if such credit or refund is allowed within any period prescribed in section 6511 (a), (b), or (c), whichever is applicable, subject to the provisions thereof limiting the amount of credit or refund in the case of a claim filed, or, if no claim was filed, in the case of credit or refund allowed within such applicable period as prescribed in section 6511 (b) or (c).

(c) The provisions of this section and section 6511 (d) (1) do not apply to an overpayment resulting from the deductibility of a debt that became partially worthless during the taxable year, but only to an overpayment resulting from the deductibility of a debt which became entirely worthless during such year.

(d) The provisions of paragraph (a) of this section with regard to an overpayment caused by the deductibility of a bad debt under section 166 or section 832 (c), or of a loss from the worthlessness of a security under section 165 (g), are likewise applicable to an overpayment caused by the effect that the deductibility of such bad debt or loss has on the application to the taxpayer of a carryover or of a carryback.

§ 301.6511(d)-2 Overpayment of income tax on account of net operating loss carrybacks.

(a) *Special period of limitation.* (1) If the claim for credit or refund relates to an overpayment of income tax attributable to a net operating loss carryback, provided in section 172(b), then in lieu of the 3-year period from the time the return was filed in which the claim may be filed or credit or refund allowed, as prescribed in section 6511 (a) or (b), the period shall be whichever of the following 2 periods expires later:

(i) The period which ends with the expiration of the fifteenth day of the fortieth month (or thirty-ninth month, in the case of a corporation) following the end of the taxable year of the net operating loss which resulted in the carryback; or

(ii) The period which ends with the expiration of the period prescribed in section 6511(c) within which a claim for credit or refund may be filed with respect to the taxable year of the net operating loss which resulted in the carryback;

except that, with respect to an overpayment attributable to the creation of or an increase in a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before September 1, 1959, or the expiration of the twelfth month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is the later.

(2) In the case of a claim for credit or refund involving a net operating loss carryback described in subparagraph (1) of this paragraph, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in section 6511 (b) (2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the carryback. If the claim involves an overpayment based not only on a net operating loss carryback described in subparagraph (1) of this paragraph but based also on other items, the credit or refund cannot exceed the sum of the following:

(i) The amount of the overpayment which is attributable to the net operating loss carryback, and

(ii) The balance of such overpayment up to a limit of the portion, if any, of the tax paid within the period provided in section 6511 (b) (2) or (c), or within the period provided in any other applicable provision of law.

(3) If the claim involves an overpayment based not only on a net operating loss carryback described in subparagraph (1) of this paragraph but based also on other items, and if the claim with respect to any items is barred by the expiration of any applicable period of limitation, the portion of the overpayment attributable to the items not so barred shall be determined by treating the allowance of such items as the first adjustment to be made in computing such overpayment. If a claim for credit or refund is not filed, and if credit or

refund is not allowed, within the period prescribed in this paragraph, then credit or refund may be allowed or made only if claim therefor is filed, or if such credit or refund is allowed, within the period prescribed in section 6511 (a), (b), or (c), whichever is applicable, subject to the provisions thereof limiting the amount of credit or refund in the case of a claim filed, or if no claim was filed, in case of credit or refund allowed, within such applicable period. For the limitations on the allowance of interest for an overpayment where credit or refund is subject to the provisions of this section, see section 6611 (f).

(b) *Barred overpayments.* If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carryback is otherwise prevented by the operation of any law or rule of law (other than section 7122, relating to compromises), such credit or refund may be allowed or made under the provisions of section 6511 (d) (2) (B) if a claim therefor is filed within the period provided by section 6511 (d) (2) (A) and paragraph (a) of this section for filing a claim for credit or refund of an overpayment attributable to a carryback. Similarly, if the allowance of an application, credit, or refund of a decrease in tax determined under section 6411 (b) is otherwise prevented by the operation of any law or rule of law (other than section 7122), such application, credit, or refund may be allowed or made if an application for a tentative carryback adjustment is filed within the period provided in section 6411 (a). Thus, for example, even though the tax liability (not including the net operating loss deduction or the effect of such deduction) for a given taxable year has previously been litigated before the Tax Court, credit or refund of an overpayment may be allowed or made despite the provisions of section 6512 (a), if claim for such credit or refund is filed within the period provided in section 6511 (d) (2) (A) and paragraph (a) of this section. In the case of a claim for credit or refund of an overpayment attributable to a carryback, or in the case of an application for a tentative carryback adjustment, the determination of any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the net operating loss deduction, and the effect of such deduction, to the extent that such deduction is affected by a carryback which was not in issue in such proceeding.

§ 301.6511(d)–3 Special rules applicable to credit against income tax for foreign taxes.

(a) *Period in which claim may be filed.* In the case of an overpayment of income tax resulting from a credit, allowed under the provisions of section 901 or under the provisions of any treaty to which the United States is a party, for taxes paid or accrued to a foreign country or possession of the United States, a claim for credit or refund must be filed by the taxpayer within 10 years from the last date prescribed for filing the return (determined without regard to any extension of time for filing such return) for the taxable year with respect to which the claim is made. Such 10-year period shall be applied in lieu of the 3-year period prescribed in section 6511(a).

(b) *Limit on amount to be credited or refunded.* In the case of a claim described in paragraph (a) of this section, the amount of the credit or refund allowed or made may exceed the portion of the tax paid within the period prescribed in section 6511 (b) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to the allowance of a credit against income tax referred to in paragraph (a) of this section.

§ 301.6511(e) Statutory provisions; limitations on credit or refund; special rules in case of manufactured sugar.

SEC. 6511. *Limitations on credit or refund.*

* * *

(e) *Special rules in case of manufactured sugar*—(1) *Use as livestock feed or for distillation of alcohol.* No payment shall be allowed under section 6418 (a) unless within 2 years after the right to such payment has accrued a claim therefor is filed by the person entitled thereto.

(2) *Exportation.* No payment shall be allowed under section 6418 (b) unless within 2 years after the right to such payment has accrued a claim therefor is filed by the person entitled thereto.

§ 301.6511(e)–1 Special rules applicable to manufactured sugar.

(a) *Use as livestock feed and for distillation of alcohol.* No payment shall be allowed or made under section 6418 (a) unless within 2 years after the date the right to such payment has accrued a claim therefor is filed by the person entitled thereto. Such right accrues as of the date the manufactured sugar, or article manufactured therefrom, is used for a purpose for which payment is allowable under section 6418(a).

(b) *Exportation.* No payment shall be allowed or made under section 6418 (b) unless within 2 years after the date the right to such payment has accrued a claim therefor is filed by the person entitled thereto. Such right accrues as of the date the articles are exported.

§ 301.6511(f) Statutory provisions; limitations on credit or refund; cross references.

SEC. 6511. *Limitations on credit or refund.* * * *

(f) *Cross references.* (1) For time return deemed filed and tax considered paid, see section 6513.

(2) For limitations with respect to certain credits against estate tax, see sections 2011 (c), 2014 (b), and 2015.

(3) For limitations in case of floor stocks refunds, see section 6412.

(4) For a period of limitations for credit or refund in the case of joint income returns after separate returns have been filed, see section 6013 (b) (3).

(5) For limitations in case of payments under section 6420 (relating to gasoline used on farms), see section 6420 (b).

(6) For limitations in case of payments under section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), see section 6421 (c).

[Sec. 6511 (f) as amended by sec. 4 (e), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 91); sec. 208 (e) (6), Highway Revenue Act 1956 (70 Stat. 397)]

§ 301.6512 Statutory provisions; limitations in case of petition to Tax Court.

SEC. 6512. *Limitations in case of petition to Tax Court*—(a) *Effect of petition to Tax Court.* If the Secretary or his delegate has mailed to the taxpayer a notice of deficiency under section 6212(a) (relating to deficiencies of income, estate, and gift taxes) and if the taxpayer files a petition with the Tax Court within the time prescribed in section 6213 (a), no credit or refund of income tax for the same taxable year, of gift tax for the same calendar year, or of estate tax in respect of the taxable estate of the same decedent, in respect of which the Secretary or his delegate has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of the tax shall be instituted in any court except—

(1) As to overpayments determined by a decision of the Tax Court which has become final; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Tax Court which has become final; and

(3) As to any amount collected after the period of limitation upon the making of levy or beginning a proceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Tax Court which has become final, as to whether such period has expired before the notice of deficiency was mailed, shall be conclusive.

(b) *Overpayment determined by Tax Court*—(1) *Jurisdiction to determine.* If the Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of income tax for the same taxable year, of gift tax for the same calendar year, or of estate tax in respect of the taxable estate of the same decedent, in respect of which the Secretary or his delegate determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of such tax, the Tax Court shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Tax Court has become final, be credited or refunded to the taxpayer.

(2) *Limit on amount of credit or refund.* No such credit or refund shall be allowed or made of any portion of the tax unless the Tax Court determines as part of its decision that such portion was paid—

(A) After the mailing of the notice of deficiency, or

(B) Within the period which would be applicable under section 6511 (b) (2), (c), or (d), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the Tax Court finds that there is an overpayment.

§ 301.6512–1 Limitations in case of petition to Tax Court.

(a) *Effect of petition to Tax Court*—(1) *General rule.* If a person, having a right to file a petition with the Tax Court with respect to a deficiency in income, estate, or gift tax imposed by subtitle A or B of the Code, has filed such petition within the time prescribed in section 6213(a), no credit or refund of income tax for the same taxable year, or of gift tax for the same calendar year, or of estate tax in respect of the taxable estate of the same decedent, in respect of which a district director (or an assistant regional commissioner, appellate) has de-

termined the deficiency, shall be allowed or made, and no suit in any court for the recovery of any part of such tax shall be instituted by the taxpayer, except as to items set forth in subparagraph (2) of this paragraph.

(2) *Exceptions.* The exceptions to the rule stated in subparagraph (1) of this paragraph are as follows:

(i) An overpayment determined by a decision of the Tax Court which has become final;

(ii) Any amount collected in excess of an amount computed in accordance with the decision of the Tax Court which has become final; and

(iii) Any amount collected after the expiration of the period of limitation upon levying or beginning a proceeding in court for collection.

(b) *Overpayment determined by Tax Court.* If the Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of income tax for the same taxable year, or of gift tax for the same calendar year, or of estate tax in respect of the taxable estate of the same decedent, in respect of which a district director (or an assistant regional commissioner, appellate) has determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of such tax, the overpayment determined by the Tax Court shall be credited or refunded to the taxpayer when the decision of the Tax Court has become final. (See section 7481, relating to the date when Tax Court decision becomes final.) No such credit or refund shall be allowed or made of any portion of the tax unless the Tax Court determines as part of its decision that such portion was paid—

(1) After the mailing of the notice of deficiency, or

(2) Within the period which would be applicable under section 6511 (b) (2), (c), or (d) (see §§ 301.6511 (b)–1, 301.6511 (c)–1, 301.6511 (d)–1, 301.6511 (d)–2, and 301.6511 (d)–3), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the Tax Court finds that there is an overpayment.

(c) *Jeopardy assessments.* In the case of a jeopardy assessment made under section 6861 (a), if the amount which should have been assessed as determined by a decision of the Tax Court which has become final is less than the amount already collected, the excess payment shall be credited or refunded subject to a determination being made by the Tax Court with respect to the time of payment as stated in paragraph (b) of this section.

(d) *Disallowance of deficiency by reviewing court.* If the amount of the deficiency determined by the Tax Court (in a case where collection has not been stayed by the filing of a bond) is disallowed in whole or in part by the reviewing court, then the overpayment resulting from such disallowance shall be credited or refunded without the making of claim therefor, subject to a determination being made by the Tax Court with respect to the time of payment as stated in paragraph (b) of this section. (See section 7481, relating to date Tax Court decision becomes final.)

(e) *Collection in excess of amount determined by Tax Court.* Where the amount collected is in excess of the amount computed in accordance with the decision of the Tax Court which has become final, the excess payment shall be credited or refunded within the period of limitation provided in section 6511.

(f) *Collection after expiration of statutory period.* Where an amount is collected after the statutory period of limitation upon the beginning of levy or a proceeding in court for collection has expired (see section 6502, relating to collection after assessment), the taxpayer may file a claim for refund of the amount so collected within the period of limitation provided in section 6511. In any such case, the decision of the Tax Court as to whether the statutory period upon collection of the tax expired before notice of the deficiency was mailed shall, when the decision becomes final, be conclusive.

§ 301.6513 Statutory provisions; time return deemed filed and tax considered paid.

SEC. 6513. *Time return deemed filed and tax considered paid*—(a) *Early return or advance payment of tax.* For purposes of section 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day. For purposes of section 6511 (b) (2) and (c) and section 6512, payment of any portion of the tax made before the last day prescribed for the payment of the tax shall be considered made on such last day. For purposes of this subsection, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer and without regard to any election to pay the tax in installments.

(b) *Prepaid income tax.* For purposes of section 6511 or 6512, any tax actually deducted and withheld at the source during any calendar year under chapter 24 shall, in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of the fourth month following the close of his taxable year with respect to which such tax is allowable as a credit under section 31. For purposes of section 6511 or 6512, any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 for such taxable year (determined without regard to any extension of time for filing such return).

(c) *Return and payment of social security taxes and income tax withholding.* Notwithstanding subsection (a), for purposes of section 6511 with respect to any tax imposed by chapter 21 or 24—

(1) If a return for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding calendar year; and

(2) If a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before April 15 of the succeeding calendar year, such tax shall be considered paid on April 15 of such succeeding calendar year.

(d) *Overpayment of income tax credited to estimated tax.* If any overpayment of income tax is, in accordance with section 6402 (b), claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year (whether or not claimed as a credit in the return of estimated tax for such succeeding taxable year), and no claim for credit or refund of such overpayment shall be allowed for the taxable year in which the overpayment arises.

§ 301.6513–1 Time return deemed filed and tax considered paid.

(a) *Early return or advance payment of tax.* For purposes of section 6511, a return (other than the employment tax returns referred to in paragraph (c) of this section) filed before the last day prescribed by law or regulations for the filing thereof shall be considered as filed on such last day. For purposes of section 6511 (b) (2) and (c) and section 6512, payment of any portion of the tax made before the last day prescribed for payment shall be considered made on such last day. An extension of time for filing a return or for paying any tax, or an election to pay any tax in installments, shall not be given any effect in determining under this section the last day prescribed for filing a return or paying any tax.

(b) *Prepaid income tax.* For purposes of section 6511 (relating to limitations on credit or refund) or section 6512 (relating to limitations in case of petition to Tax Court), any tax actually deducted and withheld at the source during any calendar year under chapter 24 of the Code (relating to collection of income tax at source on wages) shall, in respect of the recipient of the income, be deemed to have been paid by him on the 15th day of the fourth month following the close of his taxable year with respect to which such tax is allowable as a credit under section 31 (relating to tax withheld on wages). For purposes of section 6511 or 6512, any amount paid as estimated income tax for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under section 6012 (relating to persons required to make returns of income) for such taxable year (determined without regard to any extension of time for filing such return).

(c) *Return and payment of social security taxes and income tax withholding.* If a return of tax under chapter 21 of the Code (relating to the Federal Insurance Contributions Act) or chapter 24 of the Code (relating to the collection of income tax at source on wages) for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year or if a tax with respect to remuneration paid during any period ending with or within a calendar year is paid before such date, for purposes of section 6511 (relating to limitations on credit or refund) the return shall be considered filed, or the tax considered paid, on April 15th of such succeeding calendar year.

(d) *Overpayment of income tax credited to estimated tax.* If a taxpayer elects under the provisions of section 6402 (b) to credit an overpayment of income tax for a taxable year against estimated tax for the succeeding taxable year, the amount so credited shall be considered a payment of income tax for such succeeding taxable year

(whether or not claimed as a credit on the estimated tax return for such succeeding taxable year). If the treatment of such amount as a payment of income tax for the succeeding taxable year results in an overpayment for such succeeding taxable year, the period of limitations applicable to such overpayment is determined by reference to that taxable year. An election so to credit an overpayment of income tax precludes the allowance of a claim for credit or refund of such overpayment for the taxable year in which the overpayment arises.

§ 301.6514(a) Statutory provisions; credits or refunds after period of limitation.

SEC. 6514. *Credits or refunds after period of limitation*—(a) *Credits or refunds after period of limitation.* A refund of any portion of an internal revenue tax shall be considered erroneous and a credit of any such portion shall be considered void—

(1) *Expiration of period for filing claim.* If made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(2) *Disallowance of claim and expiration of period for filing suit.* In the case of a claim filed within the proper time and disallowed by the Secretary or his delegate, if the credit or refund was made after the expiration of the period of limitation for filing suit, unless within such period suit was begun by the taxpayer.

(3) *Recovery of erroneous refunds.* For procedure by the United States to recover erroneous refunds, see sections 6532 (b) and 7405.

§ 301.6514(a)–1 Credits or refunds after period of limitation.

(a) A refund of any portion of any internal revenue tax (or any interest, additional amount, addition to the tax, or assessable penalty) shall be considered erroneous and a credit of any such portion shall be considered void:

(1) If made after the expiration of the period of limitation prescribed by section 6511 for filing claim therefor, unless prior to the expiration of such period claim was filed, or

(2) In the case of a timely claim, if the credit or refund was made after the expiration of the period of limitation prescribed by section 6532 (a) for the filing of suit, unless prior to the expiration of such period suit was begun.

(b) For procedure by the United States to recover erroneous refunds, see sections 6532 (b) and 7405.

§ 301.6514(b) Statutory provisions; credit after period of limitation.

SEC. 6514. *Credits or refunds after period of limitation.* • • •

(b) *Credit after period of limitation.* Any credit against a liability in respect of any taxable year shall be void if any payment in respect to such liability would be considered an overpayment under section 6401 (a).

§ 301.6514(b)–1 Credit against barred liability.

Any credit against a liability in respect of any taxable year shall be void if the collection of such liability would be barred by the applicable statute of limitations at the time such credit is made.

§ 301.6515 Statutory provisions; cross references.

SEC. 6515. *Cross references.* For limitations in case of—

(1) Adjustments incident to involuntary liquidation of inventory, see section 1321.

(2) War loss recoveries where prior benefit rule is elected, see section 1335.

(3) Deficiency dividends of a personal holding company, see section 547.

(4) Overpayment in certain renegotiations of war contracts, see section 1481.

(5) Tentative carry-back adjustments, see section 6411.

(6) Service in a combat zone, etc., see section 7508.

(7) Suits for refund by taxpayers, see section 6532 (a).

MITIGATION OF EFFECT OF PERIOD OF LIMITATIONS

§ 301.6521 Statutory provisions; mitigation of effect of limitation in case of related taxes under different chapters.

SEC. 6521. *Mitigation of effect of limitation in case of related taxes under different chapters*—(a) *Self-employment tax and tax on wages.* In the case of the tax imposed by chapter 2 (relating to tax on self-employment income) and the tax imposed by section 3101 (relating to tax on employees under the Federal Insurance Contributions Act)—

(1) If an amount is erroneously treated as self-employment income, or if an amount is erroneously treated as wages, and

(2) If the correction of the error would require an assessment of one such tax and the refund or credit of the other tax, and

(3) If at any time the correction of the error is authorized as to one such tax but is prevented as to the other tax by any law or rule of law (other than section 7122, relating to compromises),

then, if the correction authorized is made, the amount of the assessment, or the amount of the credit or refund, as the case may be, authorized as to the one tax shall be reduced by the amount of the credit or refund, or the amount of the assessment, as the case may be, which would be required with respect to such other tax for the correction of the error if such credit or refund, or such assessment, of such other tax were not prevented by any law or rule of law (other than section 7122, relating to compromises).

(b) *Definitions.* For purposes of subsection (a), the terms "self-employment income" and "wages" shall have the same meaning as when used in section 1402 (b).

§ 301.6521–1 Mitigation of effect of limitation in case of related employee social security tax and self-employment tax.

(a) Section 6521 may be applied in the correction of a certain type of error involving both the tax on self-employment income under section 1401 and the employee tax under section 3101 if the correction of the error as to one tax is, on the date the correction is authorized, prevented in whole or in part by the operation of any law or rule of law other than section 7122, relating to compromises. Examples of such law are section 6212 (c), 6401 (a), 6501, 6511, 6512 (a), 6514, 6532, 6901 (c), (d) and (e), 7121, and 7459 (e).

(b) If the liability for either tax with respect to which the error was made has been compromised under section 7122, the provisions of section 6521 limiting the correction with respect to the other tax do not apply.

(c) Section 6521 is not applicable if, on the date of the authorization, correction of the effect of the error is permissible as to both taxes without recourse to such section.

(d) If, because an amount of wages, as defined in section 3121 (a), is erroneously treated as self-employment income, as defined in section 1402 (b), or an amount of self-employment income is erroneously treated as wages, it is necessary in correcting the error to assess the correct tax and give a credit or refund for the amount of the tax erroneously paid, and if either, but not both, of such adjustments is prevented by any law or rule of law (other than section 7122), the amount of the assessment, or the amount of the credit or refund, authorized shall reflect the adjustment which would be made in respect of the other tax (either the tax on self-employment income under section 1401 or the employee tax under section 3101) but for the operation of such law or rule of law. For example, assume that during 1955 A paid $10 as tax on an amount erroneously treated as "wages", when such amount was actually self-employment income, and that credit or refund of the $10 is not barred. A should have paid a self-employment tax of $15 on the amount. If the assessment of the correct tax, that is, $15, is barred by the statute of limitations, no credit or refund of the $10 shall be made without offsetting against such $10 the $15, assessment of which is barred. Thus, no credit or refund in respect of the $10 can be made.

(e) As another example, assume that during 1955 a taxpayer reports wages of $4,200 and net earnings from self-employment of $900. By reason of the limitations of section 1402 (b) he shows no self-employment income. Assume further that by reason of a final decision by the Tax Court of the United States, further adjustments to the taxpayer's income tax liability are barred. The question of the amount of his wages, as defined in section 3121, was not in issue in the Tax Court litigation, but it is subsequently determined (within the period of limitations applicable under the Federal Insurance Contributions Act) that $700 of the $4,200 reported as wages was not for employment as defined in section 3121 (b). Therefore, the taxpayer is entitled to the allowance of a refund of the $14 tax paid on such remuneration under section 3101. The reduction of his wages from $4,200 to $3,500 would result in the determination of $700 self-employment income, the tax on which is $21 for the year. Under section 6521, the overpayment of $14 would be offset by the barred deficiency of $21, thus eliminating the refund otherwise allowable. If the facts were changed so that the taxpayer erroneously paid tax on self-employment income of $700, having been taxed on only $3,500 as wages, and within the period of limitations applicable under the Federal Insurance Contributions Act, it is determined that his wages were $4,200, the tax of $14 under section 3101, otherwise collectible, would be eliminated by offsetting under section 6521 the barred overpayment of $21. The balance of the barred overpayment, $7, cannot be credited or refunded.

(f) Another illustration of the operation of section 6521 is the case of a taxpayer who, for 1955, is erroneously taxed on $2,500 as wages, the tax on which is $50, and who reports no self-employment income. After the period of limitations has run on the refund of the tax under the Federal Insurance Contributions Act, it is determined that the amount treated as wages should have been reported as net earnings from self-employment. The taxpayer's self-employment income would then be $2,500 and the tax thereon would be $75. Assume that the period of limitations applicable to subtitle A of the Code has not expired, and that a notice of deficiency may properly be issued. Under section 6521, the amount of the deficiency of $75 must be reduced by the barred overpayment of $50.

§ 301.6521–2 Law applicable in determination of error.

The question of whether there was an erroneous treatment of self-employment income or of wages is determined under the provisions of law and regulations applicable with respect to the year or other taxable period as to which the error was made. The fact that the error was in pursuance of an interpretation, either judicial or administrative, accorded such provisions of law and regulations at the time the action involved was taken is not necessarily determinative of this question. For example, if a later judicial decision authoritatively alters such interpretation so that such action is contrary to the applicable provisions of the law and regulations as later interpreted, the error comes within the scope of section 6521.

PERIODS OF LIMITATION IN JUDICIAL PROCEEDINGS

§ 301.6531 Statutory provisions; periods of limitation on criminal prosecutions.

SEC. 6531. *Periods of limitation on criminal prosecutions.* No person shall be prosecuted, tried, or punished for any of the various offenses arising under the internal revenue laws unless the indictment is found or the information instituted within 3 years next after the commission of the offense, except that the period of limitation shall be 6 years—

(1) For offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner;

(2) For the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof;

(3) For the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document);

(4) For the offense of willfully failing to pay any tax, or make any return (other than a return required under authority of part III of subchapter A of chapter 61) at the time or times required by law or regulations;

(5) For offenses described in sections 7206 (1) and 7207 (relating to false statements and fraudulent documents);

(6) For the offense described in section 7212(a) (relating to intimidation of officers and employees of the United States);

(7) For offenses described in section 7214 (a) committed by officers and employees of the United States; and

(8) For offenses arising under section 371 of Title 18 of the United States Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof.

The time during which the person committing any of the various offenses arising under the internal revenue laws is outside the United States or is a fugitive from justice within the meaning of section 3290 of Title 18 of the United States Code, shall not be taken as any part of the time limited by law for the commencement of such proceedings. (The preceding sentence shall also be deemed an amendment to section 3748 (a) of the Internal Revenue Code of 1939, and shall apply in lieu of the sentence in section 3748 (a) which relates to the time during which a person committing an offense is absent from the district wherein the same is committed, except that such amendment shall apply only if the period of limitations under section 3748 would, without the application of such amendment, expire more than 3 years after the date of enactment of this title, and except that such period shall not, with the application of this amendment, expire prior to the date which is 3 years after the date of enactment of this title.) Where a complaint is instituted before a commissioner of the United States within the period above limited, the time shall be extended until the date which is 9 months after the date of the making of the complaint before the commissioner of the United States. For the purpose of determining the periods of limitation on criminal prosecutions, the rules of section 6513 shall be applicable.

§ 301.6532 Statutory provisions; periods of limitation on suits.

SEC. 6532. *Periods of limitation on suits.*—(a) *Suits by taxpayers for refund.*—(1) *General rule.* No suit or proceeding under section 7422 (a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary or his delegate renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary or his delegate to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

(2) *Extension of time.* The 2-year period prescribed in paragraph (1) shall be extended for such period as may be agreed upon in writing between the taxpayer and the Secretary or his delegate.

(3) *Waiver of notice of disallowance.* If any person files a written waiver of the requirement that he be mailed a notice of disallowance, the 2-year period prescribed in paragraph (1) shall begin on the date such waiver is filed.

(4) *Reconsideration after mailing of notice.* Any consideration, reconsideration, or action by the Secretary or his delegate with respect to such claim following the mailing of a notice by certified mail or registered mail of disallowance shall not operate to extend the period within which suit may be begun.

(b) *Suits by United States for recovery of erroneous refunds.* Recovery of an erroneous refund by suit under section 7405 shall be allowed only if such suit is begun within 2 years after the making of such refund, except that such suit may be brought at any time within 5 years from the making of the refund if it appears that any part of the refund was induced by fraud or misrepresentation of a material fact.

[Sec 6532 as amended by sec. 89(b), Technical Amendments Act 1958 (72 Stat. 1665)]

§ 301.6532–1 Periods of limitation on suits by taxpayers.

(a) No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum shall be begun until whichever of the following first occurs:

(1) The expiration of 6 months from the date of the filing of the claim for credit or refund, or

(2) A decision is rendered on such claim prior to the expiration of 6 months after the filing thereof.

Except as provided in paragraph (b) of this section, no suit or proceeding for the recovery of any internal revenue tax, penalty, or other sum may be brought after the expiration of 2 years from the date of mailing by registered mail prior to September 3, 1958, or by either registered or certified mail on or after September 3, 1958, by a district director or an assistant regional commissioner to a taxpayer of a notice of disallowance of the part of the claim to which the suit or proceeding relates.

(b) The 2-year period described in paragraph (a) of this section may be extended if an agreement to extend the running of the period of limitations is executed. The agreement must be signed by the taxpayer or by an attorney, agent, trustee, or other fiduciary on behalf of the taxpayer. If the agreement is signed by a person other than the taxpayer, it shall be accompanied by an authenticated copy of the power of attorney or other legal evidence of the authority of such person to act on behalf of the taxpayer. If the taxpayer is a corporation, the agreement should be signed with the corporate name followed by the signature of a duly authorized officer of the corporation. The agreement will not be effective until signed by a district director or an assistant regional commissioner.

(c) The taxpayer may sign a waiver of the requirement that he be mailed a notice of disallowance. Such waiver is irrevocable and will commence the running of the 2-year period described in paragraph (a) of this section on the date the waiver is filed. The waiver shall set forth:

(1) The type of tax and the taxable period covered by the taxpayer's claim for refund;

(2) The amount of the claim;

(3) The amount of the claim disallowed;

(4) A statement that the taxpayer agrees the filing of the waiver will commence the running of the 2-year period provided for in section 6532(a)(1) as if a notice of disallowance had been sent the taxpayer by either registered or certified mail.

The filing of such a waiver prior to the expiration of 6 months from the date the claim was filed does not permit the filing of a suit for refund prior to the time specified in section 6532(a)(1) and paragraph (a) of this section.

(d) Any consideration, reconsideration, or other action with respect to a claim after the mailing by registered mail prior to September 3, 1958, or by either registered or certified mail on or after September 3, 1958, of a notice of disallowance or after the execution of a waiver referred to in paragraph (c) of this section, shall not extend the period for bringing suit or other proceeding under section 7422(a).

§ 301.6532–2 Periods of limitation on suits by the United States.

The United States may not recover any erroneous refund by civil action under section 7405 unless such action is begun within 2 years after the making of such refund. However, if any part of the refund was induced by fraud or misrepresentation of a material fact, the action to recover the erroneous refund may be brought at any time within 5 years from the date the refund was made.

§ 301.6533 Statutory provisions; cross references.

SEC. 6533. *Cross references.* (1) For period of limitation in respect of civil actions for fines, penalties, and forfeitures, see section 2462 of Title 28 of the United States Code.

(2) For extensions of time by reason of armed service in a combat zone, see section 7508.

(3) For suspension of running of statute until 3 years after termination of hostilities, see section 3287 of Title 18.

Interest

INTEREST ON UNDERPAYMENTS

§ 301.6601 Statutory provisions; interest on underpayment, nonpayment, or extensions of time for payment, of tax.

SEC. 6601. *Interest on underpayment, nonpayment, or extensions of time for payment, of tax*—(a) *General rule.* If any amount of tax imposed by this title (whether required to be shown on a return, or to be paid by stamp or by some other method) is not paid on or before the last date prescribed for payment, interest on such amount at the rate of 6 percent per annum shall be paid for the period from such last date to the date paid.

(b) *Extensions of time for payment of estate tax.* If the time for payment of an amount of tax imposed by chapter 11 is extended as provided in section 6161(a)(2) or 6166, or if the time for payment of an amount of such tax is postponed or extended as provided by section 6163, interest shall be paid at the rate of 4 percent, in lieu of 6 percent as provided in subsection (a).

(c) *Last date prescribed for payment.* For purposes of this section, the last date prescribed for payment of the tax shall be determined under chapter 62 with the application of the following rules:

(1) *Extensions of time disregarded.* The last date prescribed for payment shall be determined without regard to any extension of time for payment.

(2) *Installment payments.* In the case of an election under section 6152 (a) to pay the tax in installments—

(A) The date prescribed for payment of each installment of the tax shown on the return shall be determined under section 6152 (b), and

(B) The last date prescribed for payment of the first installment shall be deemed the last date prescribed for payment of any portion of the tax not shown on the return.

(3) *Jeopardy.* The last date prescribed for payment shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy (as provided in chapter 70), prior to the last date otherwise prescribed for such payment.

(4) *Last date for payment not otherwise prescribed.* In the case of taxes payable by stamp and in all other cases in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for tax arises (and in no event shall be later than the date notice and demand for the tax is made by the Secretary or his delegate).

(d) *Suspension of interest in certain income, estate, and gift tax cases.* In the case of a deficiency as defined in section 6211 (relating to income, estate, and gift taxes), if a waiver of restrictions under section 6213 (d) on the assessment of such deficiency has been filed, and if notice and demand by the Secretary or his delegate for payment of such deficiency is not made within 30 days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such 30th day and ending with the date of notice and demand.

(e) *Income tax reduced by carryback.* If the amount of any tax imposed by subtitle A is reduced by reason of a carryback of a net operating loss, such reduction in tax shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the net operating loss arises.

(f) *Applicable rules.* Except as otherwise provided in this title—

(1) *Interest treated as tax.* Interest prescribed under this section on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes. Any reference in this title (except subchapter B of chapter 63, relating to deficiency procedures) to any tax imposed by this title shall be deemed also to refer to interest imposed by this section on such tax.

(2) *No interest on interest.* No interest under this section shall be imposed on the interest provided by this section.

(3) *Interest on penalties, additional amounts, or additions to the tax.* Interest shall be imposed under subsection (a) in respect of any assessable penalty, additional amount, or addition to the tax only if such assessable penalty, additional amount, or addition to the tax is not paid within 10 days from the date of notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(4) *Payments made within 10 days after notice and demand.* If notice and demand is made for payment of any amount, and if such amount is paid within 10 days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(g) *Satisfaction by credits.* If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

(h) *Limitation on assessment and collection.* Interest prescribed under this section on any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be collected.

(i) *Exception as to estimated tax.* This section shall not apply to any failure to pay estimated tax required by section 6153 (or section 59 of the Internal Revenue Code of 1939) or section 6154.

(j) *No interest on certain adjustments.* For provisions prohibiting interest on certain adjustments in tax, see section 6205(a).

[Sec. 6601 as amended by secs. 66(c), 83 (a)(1), 84(a), Technical Amendments Act 1958 (72 Stat. 1658, 1663, 1664); sec. 206(e), Small Business Tax Revision Act 1958 (72 Stat. 1685)]

SEC. 83(e) [Technical Amendments Act of 1958]. *Interest attributable to net operating loss carryback for certain taxable years ending in 1954.* If by reason of enactment of section 172(b)(1)(A) of the Internal Revenue Code of 1954—

(1) A deficiency resulted for the first taxable year preceding a taxable year ending after December 31, 1953, and before August 17, 1954, and

(2) An overpayment resulted for the second preceding taxable year,

no interest shall be payable with respect to any portion of such deficiency for any period during which there existed a corresponding amount of such overpayment with respect to which interest is not payable.

[Sec. 83(e), Technical Amendments Act 1958 (72 Stat. 1664)]

§ 301.6601–1 Interest on underpayments.

(a) *General rule.* Interest at the rate of 6 percent per annum shall be paid on any unpaid amount of tax from the last date prescribed for payment of the tax (determined without regard to any extension of time for payment) to the date on which payment is received.

(b) *Exceptions to the general rule*—(1) *Satisfaction by credits made after December 31, 1957.* If any portion of a tax is satisfied by the credit of an overpayment after December 31, 1957, interest shall not be imposed under section 6601 on such portion of the tax for any period during which interest on the overpayment would have been allowable if the overpayment had been refunded. The provisions of this subdivision may be illustrated by the following examples:

Example (1). An examination of A's income tax returns for the calendar years 1955 and 1956 discloses an underpayment of $800 for 1955 and an overpayment of $500 for 1956. Interest under section 6601 (a) ordinarily accrues on the underpayment of $800 from April 15, 1956, to the date of payment. However, the 1956 overpayment of $500 is credited after December 31, 1957, against the underpayment in accordance with the provisions of section 6402 (a) and § 301.6402–1. Under such circumstances interest on the $800 underpayment runs from April 15, 1956, the last date prescribed for payment of the 1955 tax, to April 15, 1957, the date the overpayment of $500 was made. Since interest would have been allowed on the overpayment, if refunded, from April 15, 1957, to a date not more than 30 days prior to the date of the refund check, no interest is imposed after April 15, 1957, on $500, the portion of the underpayment satisfied by credit. Interest continues to run, however, on $300 (the $800 underpayment for 1955 less the $500 overpayment for 1956) to the date of payment.

Example (2). An examination of A's income tax returns for the calendar years 1956 and 1957 discloses an overpayment, occurring on April 15, 1957, of $700 for 1956 and an underpayment of $400 for 1957. After April 15, 1958, the last date prescribed for payment of the 1957 tax, the district director credits $400 of the overpayment against the underpayment. In such a case, interest will accrue upon the overpayment of $700 from April 15, 1957, to April 15, 1958, the due date

of the amount against which the credit is taken. Interest will also accrue under section 6611 upon $300 ($700 overpayment less $400 underpayment) from April 15, 1958, to a date not more than 30 days prior to the date of the refund check. Since a refund of the portion of the overpayment credited against the underpayment would have resulted in interest running upon such portion from April 15, 1958, to a date not more than 30 days prior to the date of the refund check, no interest is imposed upon the underpayment.

(2) *Time for payment of estate tax extended or postponed.* In the case of estate tax—

(i) If an extension of time has been granted, in accordance with section 6161(a)(2) or section 6166, for paying any portion of the tax shown on an estate tax return, or

(ii) If the time for payment of the portion of the tax attributable to a reversionary or remainder interest is extended or postponed in accordance with the provisions of section 6163,

such portion shall bear interest at the rate of 4 percent per annum from the expiration of 15 months after the date of the decedent's death to the date of the expiration of the period of the extension or postponement or to the date on which payment is received, whichever is earlier. If any part of such portion is paid before the date of the expiration of the period of the extension or postponement, such part shall bear interest only to the date on which payment is received. If, however, the full amount of the tax to which the extension or postponement applies is not paid on or before the date of the expiration of the period of the extension or postponement, the unpaid amount shall bear interest at the rate of 6 percent per annum from the date of the expiration of the period of the extension or postponement to the date on which payment is received.

(c) *Last date prescribed for payment.* The term "last date prescribed for payment", as used in section 6601 and this section, means the last date prescribed for payment as determined under the provisions of chapter 62 of the Code and the following rules:

(1) In determining the last date prescribed for payment, any extension of time granted for payment of tax (including any postponement elected under section 6163 (a)) shall be disregarded. The granting of an extension of time for the payment of tax does not relieve the taxpayer from liability for the payment of interest thereon during the period of the extension. Thus, except as provided in paragraph (b) of this section, interest at the rate of 6 percent per annum is payable on any unpaid portion of the tax for the period during which such portion remains unpaid by reason of an extension of time for the payment thereof.

(2) (i) If a tax or portion thereof is payable in installments in accordance with an election made under section 6152 (a), the last date prescribed for payment of any installment of such tax or portion thereof shall be determined under the provisions of section 6152 (b), and interest shall run on any unpaid installment from such last date to the date on which payment is received. However, in the event installment privileges are terminated by the district director for failure to pay an installment when due as provided by section 6152 (d) and the time for the payment of any remaining installment is accelerated by the issuance of a notice and demand therefor, interest shall run on such unpaid installment from the date of the notice and demand to the date on which payment is received. But see section 6601 (f) (4).

(ii) If the tax shown on a return is payable in installments, interest will run on any tax not shown on the return from the last date prescribed for payment of the first installment. If a deficiency is prorated to any unpaid installments, in accordance with section 6152 (c), interest shall run on such prorated amounts from the date prescribed for the payment of the first installment to the date on which payment is received.

(3) If, by reason of jeopardy, a notice and demand for payment of any tax is issued before the last date otherwise prescribed for payment, such last date shall nevertheless be used for the purpose of the interest computation, and no interest shall be imposed for the period commencing with the date of the issuance of the notice and demand and ending on such last date. If the tax is not paid on or before such last date, interest will automatically accrue from such last date to the date on which payment is received.

(4) In the case of taxes payable by stamp and in all other cases where the last date for payment of the tax is not otherwise prescribed, such last date for the purpose of the interest computation shall be deemed to be the date on which the liability for the tax arose. However, such last date shall in no event be later than the date of issuance by the district director of a notice and demand for the tax.

(d) *Suspension of interest; waiver of restrictions on assessment.* In the case of a deficiency determined by a district director (or an assistant regional commissioner, appellate) with respect to any income, estate, or gift tax, if the taxpayer files with such internal revenue officer an agreement waiving the restrictions on assessment of such deficiency, and if notice and demand for payment of such deficiency is not made by the district director within 30 days after the filing of such waiver, no interest shall be imposed on the deficiency for the period beginning immediately after such 30th day and ending on the date notice and demand is made by the district director. In the case of an agreement with respect to a portion of the deficiency, the rules as set forth in this paragraph are applicable only to that portion of the deficiency to which the agreement relates.

(e) *Income tax reduced by carryback.* (1) The carryback of a net operating loss shall not affect the computation of interest on any income tax for the period commencing with the last date prescribed for the payment of such tax and ending with the last day of the taxable year in which the loss occurs. For example, if the carryback of a net operating loss to a prior taxable period eliminates or reduces a deficiency in income tax for that period, the full amount of the deficiency will nevertheless bear interest at the rate of 6 percent per annum from the last date prescribed for payment of such tax until the last day of the taxable year in which the loss occurred. Interest will continue to run beyond such last day on any portion of the deficiency which is not eliminated by the carryback.

(2) Where an extension of time for payment of income tax has been granted under section 6164 to a corporation expecting a carryback, interest is payable at the rate of 6 percent per annum on the amount of such unpaid tax from the last date prescribed for payment thereof without regard to such extension.

(3) Where there has been an allowance of an overpayment attributable to a net operating loss carryback and all or part of such allowance is later determined to be excessive, interest shall be computed on the excessive amount from the last day of the year in which the net operating loss arose until the date on which the repayment of such excessive amount is received.

(f) *Applicable rules.* (1) Any interest prescribed by section 6601 shall be assessed and collected in the same manner as tax and shall be paid upon notice and demand by the district director. Any reference in the Code (except in subchapter B, chapter 63, relating to deficiency procedures) to any tax imposed by the Code shall be deemed also to refer to the interest imposed by section 6601 on such tax. Interest on a tax may be assessed and collected at any time within the period of limitation on collection after assessment of the tax to which it relates. For rules relating to the period of limitation on collection after assessment, see section 6502.

(2) No interest under section 6601 shall be payable on any interest provided by such section.

(3) Interest shall not be imposed on any assessable penalty, addition to the tax, or additional amount unless such assessable penalty, addition to the tax, or additional amount is not paid within 10 days from the date of notice and demand therefor. If interest is imposed, it shall be imposed only for the period from the date of the notice and demand to the date on which payment is received.

(4) If notice and demand is made for any amount and such amount is paid within 10 days after the date of such notice and demand, interest shall not be imposed for the period after the date of such notice and demand.

(5) No interest shall be imposed for failure to pay estimated tax as required by section 59 of the Internal Revenue Code of 1939 or section 6153 or 6154 of the Internal Revenue Code of 1954.

§ 301.6602 Statutory provisions; interest on erroneous refund recoverable by suit.

SEC. 6602. *Interest on erroneous refund recoverable by suit.* Any portion of an internal revenue tax (or any interest, assessable penalty, additional amount, or addition to tax) which has been erroneously refunded, and which is recoverable by suit pursuant to

section 7405, shall bear interest at the rate of 6 percent per annum from the date of the payment of the refund.

§ 301.6602–1 Interest on erroneous refund recoverable by suit.

Any portion of an internal revenue tax (or any interest, assessable penalty, additional amount, or addition to tax) which has been erroneously refunded, and which is recoverable by a civil action pursuant to section 7405, shall bear interest at the rate of 6 percent per annum from the date of the payment of the refund.

INTEREST ON OVERPAYMENTS

§ 301.6611 Statutory provisions; interest on overpayments.

SEC. 6611. *Interest on overpayments.* (a) *Rate.* Interest shall be allowed and paid upon any overpayment in respect of any internal revenue tax at the rate of 6 percent per annum.

(b) *Period.* Such interest shall be allowed and paid as follows:

(1) *Credits.* In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken.

(2) *Refunds.* In the case of a refund, from the date of the overpayment to a date (to be determined by the Secretary or his delegate) preceding the date of the refund check by not more than 30 days, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

(c) [Repealed.]

(d) *Advance payment of tax, payment of estimated tax, and credit for income tax withholding.* The provisions of section 6513 (except the provisions of subsection (c) thereof), applicable in determining the date of payment of tax for purposes of determining the period of limitation on credit or refund, shall be applicable in determining the date of payment for purposes of subsection (a).

(e) *Income tax refund within 45 days of due date of tax.* If any overpayment of tax imposed by subtitle A is refunded within 45 days after the last date prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return), no interest shall be allowed under subsection (a) on such overpayment.

(f) *Refund of income tax caused by carryback.* For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a carryback of a net operating loss, such overpayment shall be deemed not to have been made prior to the close of the taxable year in which such net operating loss arises.

(g) *Refund of income tax caused by carryback of foreign taxes.* For purposes of subsection (a), if any overpayment of tax results from a carryback of tax paid or accrued to foreign countries or possessions of the United States, such overpayment shall be deemed not to have been paid or accrued prior to the close of the taxable year under this subtitle in which such taxes were in fact paid or accrued.

(h) *Prohibition of administrative review.* For prohibition of administrative review, see section 6406.

[Sec. 6611 as amended by secs. 42(b), 83 (b), (c), Technical Amendments Act 1958 (72 Stat. 1640, 1664)]

§ 301.6611–1 Interest on overpayments.

(a) *General rule.* Except as otherwise provided, interest shall be allowed on any overpayment of any tax at the rate of 6 percent per annum from the date of overpayment of the tax.

(b) *Date of overpayment.* Except as provided in section 6401(a), relating to assessment and collection after the expiration of the applicable period of limitation, there can be no overpayment of tax until the entire tax liability has been satisfied. Therefore, the dates of overpayment of any tax are the date of payment of the first amount which (when added to previous payments) is in excess of the tax liability (including any interest, addition to the tax, or additional amount) and the dates of payment of all amounts subsequently paid with respect to such tax liability. For rules relating to the determination of the date of payment in the case of an advance payment of tax, a payment of estimated tax, and a credit for income tax withholding, see paragraph (d) of this section.

(c) *Examples.* The application of paragraph (b) may be illustrated by the following examples:

Example (1). Corporation X files an income tax return on March 15, 1955, for the calendar year 1954 disclosing a tax liability of $1,000 and elects to pay the tax in installments. Subsequent to payment of the final installment, the correct tax liability is determined to be $900.

Tax liability

Assessed	$1,000
Correct liability	900
Overassessment	100

Record of payments

March 15, 1955	$500
June 15, 1955	500

Since the correct liability in this case is $900, the payment of $500 made on March 15, 1955, and $400 of the payment made on June 15, 1955, are applied in satisfaction of the tax liability. The balance of the payment made on June 15, 1955 ($100) constitutes the amount of the overpayment, and the date on which such payment was made would be the date of the overpayment from which interest would be computed.

Example (2). Corporation Y files an income tax return for the calendar year 1954 on March 15, 1955, disclosing a tax liability of $50,000, and elects to pay the tax in installments. On October 15, 1956, a deficiency in the amount of $10,000 is assessed and is paid in equal amounts on November 15 and November 26, 1956. On April 15, 1957, it is determined that the correct tax liability of the taxpayer for 1954 is only $35,000.

Tax liability

Original assessment	$50,000
Deficiency assessment	10,000
Total assessed	60,000
Correct liability	35,000
Overassessment	25,000

Record of payments

March 15, 1955	$25,000
June 15, 1955	25,000
November 15, 1956	5,000
November 26, 1956	5,000

Since the correct liability in this case is $35,000, the entire payment of $25,000 made on March 15, 1955, and $10,000 of the payment made on June 15, 1955, are applied in satisfaction of the tax liability. The balance of the payment made on June 15, 1955 ($15,000), plus the amounts paid on November 15 ($5,000), and November 26, 1956 ($5,000), constitute the amount of the overpayment. The dates of the overpayments from which interest would be computed are as follows:

Date	*Amount of overpayment*
June 15, 1955	$15,000
November 15, 1956	5,000
November 26, 1956	5,000

The amount of any interest paid with respect to the deficiency of $10,000 is also an overpayment.

(d) *Advance payment of tax, payment of estimated tax, and credit for income tax withholding.* In the case of an advance payment of tax, a payment of estimated income tax, or a credit for income tax withholding, the provisions of section 6513 (except the provisions of subsection (c) thereof), applicable in determining the date of payment of tax for purposes of the period of limitations on credit or refund, shall apply in determining the date of overpayment for purposes of computing interest thereon.

(e) *Refund of income tax caused by carryback.* If any overpayment of tax imposed by subtitle A of the Code results from a carryback of a net operating loss, such overpayment, for purposes of this section, shall be deemed not to have been made prior to the end of the taxable year in which such loss occurs.

(f) *Refund of income tax caused by carryback of foreign taxes.* For purposes of paragraph (a) of this section, any overpayment of tax resulting from a carryback of tax paid or accrued to foreign countries or possessions of the United States shall be deemed not to have been paid or accrued before the close of the taxable year under subtitle F of the Code in which such taxes were in fact paid or accrued.

(g) *Period for which interest allowable in case of refunds.* If an overpayment of tax is refunded, interest shall be allowed from the date of the overpayment to a date determined by the district director, which shall be not more than 30 days prior to the date of the refund check. The acceptance of a refund check shall not deprive the taxpayer of the right to make a claim for any additional overpayment and interest thereon, provided the claim is made within the applicable period of limitation. However, if a taxpayer does not accept a refund check, no additional interest on the amount of the overpayment included in such check shall be allowed.

(h) *Period for which interest allowable in case of credits*—(1) *General rule.* If an overpayment of tax is credited, interest shall be allowed from the date of overpayment to the due date (as determined under subparagraph (2) of this paragraph) of the amount against which such overpayment is credited.

(2) *Determination of due date*—(i) *In general.* The term "due date", as used in this section, means the last day fixed by law or regulations for the payment of the tax (determined without regard to any extension of time), and not the date on which the district director makes demand for the payment of the tax. Therefore, the due date of a tax (other than an additional assess-

ment subject to the special rule provided by subdivision (iv) of this subparagraph) is the date fixed for the payment of the tax or the several installments thereof.

(ii) *Tax payable in installments*—(a) *In general.* In the case of a credit against a tax, where the taxpayer had properly elected to pay the tax in installments, the due date is the date prescribed for the payment of the installment against which the credit is applied.

(b) *Delinquent installment.* If the taxpayer is delinquent in payment of an installment of tax and the district director has issued a notice and demand for the payment of the delinquent installment and the remaining installments, the due date of each remaining installment shall then be the date of such notice and demand.

(iii) *Tax or installment not yet due.* If a taxpayer agrees to the crediting of an overpayment against tax or an installment of tax and the schedule of allowance is signed prior to the date on which such tax or installment would otherwise become due, then the due date of such tax or installment shall be the date on which such schedule is signed.

(iv) *Additional assessment satisfied by credit before January 1, 1958.* In the case of a credit made before January 1, 1958, against an additional asessment, the due date of the tax satisfied by the credit is the date the additional assessment was made. For purposes of this subdivision, the term "additional assessment" means a further assessment of a tax of the same character previously paid in part, and includes the assessment of a deficiency as defined in section 6211.

(v) *Assessed interest.* In the case of a credit against assessed interest, the due date is the date of the assessment of such interest.

(vi) *Additional amount, addition to the tax, or assessable penalty.* In the case of a credit against an amount assessed as an additional amount, addition to the tax, or assessable penalty, the due date is the date of the assessment.

(vii) *Estimated income tax for succeeding year.* If the taxpayer elects to have all or part of the overpayment shown by his return applied to his estimated tax for his succeeding taxable year, no interest shall be allowed on such portion of the overpayment credited and such amount shall be applied as a payment on account of the estimated tax for such year or the installments thereof.

(i) [Reserved]

(j) *Refund within 45 days.* If an overpayment of tax imposed by subtitle A of the Code is refunded within 45 days after the last date prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return), no interest shall be allowed on such overpayment.

§ 301.6612 Statutory provisions; cross references.

SEC. 6612. *Cross references*—(a) *Interest on judgments for overpayments.* For interest on judgments for overpayments, see 28 U. S. C. 2411 (a).

(b) *Adjustments.* For provisions prohibiting interest on certain adjustments in tax, see section 6413 (a).

(c) *Other restrictions on interest.* For other restrictions on interest, see section 2011 (c) (relating to refunds due to credit for State taxes), 2014 (e) (relating to refunds attributable to foreign tax credits), 6412 (relating to floor stock refunds), 6413 (d) (relating to taxes under the Federal Unemployment Tax Act), 6416 (relating to certain taxes on sales and services), 6419 (relating to the excise tax on wagering), 6420 (relating to payments in the case of gasoline used on the farm for farming purposes), and 6421 (relating to payments in case of gasoline used for certain nonhighway purposes or by local transit systems).

[Sec. 6612 as amended by sec. 4 (f), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 91); sec. 208 (e) (7), Highway Revenue Act 1956 (70 Stat. 397)]

Additions to the Tax, Additional Amounts, and Assessable Penalties

ADDITIONS TO THE TAX AND ADDITIONAL AMOUNTS

§ 301.6651 Statutory provisions; failure to file tax return.

SEC. 6651. *Failure to file tax return*—(a) *Addition to the tax.* In case of failure to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), of subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

(b) *Penalty imposed on net amount due.* For purposes of subsection (a), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(c) *Exception for declarations of estimated tax.* This section shall not apply to any failure to file a declaration of estimated tax required by section 6015 or section 6016.

§ 301.6651–1 Failure to file tax return.

(a) *Addition to the tax*—(1) *In general.* In case of failure to file a return required under authority of—

(i) Subchapter A, chapter 61, of the Code, relating to returns and records (other than sections 6015 and 6016, relating to declarations of estimated tax, and part III thereof, relating to information returns);

(ii) Subchapter A, chapter 51, of the Code, relating to distilled spirits, wines, and beer;

(iii) Subchapter A, chapter 52, of the Code, relating to tobacco, cigars, cigarettes, and cigarette paper and tubes; or

(iv) Subchapter A, chapter 53, of the Code, relating to machine guns and certain other firearms;

and the regulations thereunder, on or before the date prescribed for filing (determined with regard to any extension of time for such filing), there shall be added to the tax required to be shown on the return the amount specified below unless the failure to file the return within the prescribed time is shown to the satisfaction of the district director to be due to reasonable cause and not to willful neglect. (See subparagraph (3) of this paragraph.) The amount to be added to the tax is 5 percent thereof if the failure is for not more than one month, with an additional 5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate.

(2) *Month defined.* (i) If the date prescribed for filing the return is the last day of a calendar month, each succeeding calendar month or fraction thereof during which the failure to file continues shall constitute a month for purposes of section 6651.

(ii) If the date prescribed for filing the return is a date other than the last day of a calendar month, the period which terminates with the date numerically corresponding thereto in the succeeding calendar month and each such successive period shall constitute a month for purposes of section 6651. If, in the month of February, there is no date corresponding to the date prescribed for filing the return, the period from such date in January through the last day of February shall constitute a month for purposes of section 6651. Thus, if a return is due on January 30, the first month shall end on February 28 (or 29 if a leap year), and the succeeding months shall end on March 30, April 30, etc.

(iii) If a return is not timely filed, the fact that the date prescribed for filing the return, or the corresponding date in any succeeding calendar month, falls on a Saturday, Sunday, or a legal holiday is immaterial in determining the number of months for which the addition to the tax under section 6651 applies.

(3) *Showing of reasonable cause.* A taxpayer who wishes to avoid the addition to the tax for failure to file a tax return must make an affirmative showing of all facts alleged as a reasonable cause for his failure to file such return on time in the form of a written statement containing a declaration that it is made under penalties of perjury. Such statement should be filed with the district director with whom the return is required to be filed. If the district director determines that the delinquency was due to a reasonable cause, and not to willful neglect, the addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause.

(b) *Penalty imposed on net amount due.* The amount of tax required to be shown on the return shall be reduced for purposes of section 6651 (a) by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return. For example, under section 6072 (a), income tax re-

turns of individuals on a calendar year basis must be filed on or before the 15th day of April following the close of the calendar year. Assume an individual filed his income tax return, Form 1040, for the calendar year 1954 on May 20, 1955, and such delinquency is not due to reasonable cause. The tax shown on the return is $800 and a deficiency of $200 is subsequently assessed, making the tax required to be shown on the return $1,000. Of this amount, $300 has been paid by withholding from wages and $400 has been paid as estimated tax. In addition to interest from April 15, 1955, there will be assessed an additional amount of $30, which is 10 percent (5 percent for the month from April 16 through May 15, and 5 percent for the fractional part of the month from May 16 through May 20) of the net amount of $300 due ($1,000 less $700 paid on or before April 15).

(c) *No addition to tax if fraud penalty assessed.* No addition to the tax under section 6651 shall be assessed with respect to an underpayment of tax if a 50 percent addition to the tax for fraud is assessed with respect to the same underpayment under section 6653 (b). See section 6653 (d).

§ 301.6652 Statutory provisions; failure to file certain information returns.

SEC. 6652. *Failure to file certain information returns*—(a) *Additional amount.* In case of each failure to file a statement of a payment to another person, required under authority of section 6041 (relating to information at source), section 6042(1) (relating to payments of corporate dividends), section 6044 (relating to patronage dividends), or section 6051(d) (relating to information returns with respect to income tax withheld), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary or his delegate and in the same manner as tax), by the person failing to so file the statement, $1 for each such statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $1,000.

(b) *Alcohol and tobacco taxes.* For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see, generally, subtitle E.

[Sec. 6652 as amended by sec. 85, Technical Amendments Act 1958 (72 Stat. 1664)]

§ 301.6652–1 Failure to file certain information returns.

(a) *Additional amount*—(1) *In general.* In case of each failure to file a statement, with respect to a payment to another person, required under authority of—

(i) Section 6041, relating to information at source,

(ii) Section 6042(1), relating to payments of corporate dividends,

(iii) Section 6044, relating to patronage dividends, or

(iv) Section 6051(d), relating to information returns with respect to income tax withheld or the employee tax under the Federal Insurance Contributions Act,

and the regulations under such sections, within the time prescribed for filing such statement (determined with regard to any extension of time for filing), there shall be paid by the person who failed to file such statement $1 for each such statement not filed. However, the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $1,000. The additional amount imposed for such failures shall be paid in the same manner as tax upon notice and demand by the district director.

(2) *Showing of reasonable cause.* The penalty imposed by section 6652 shall not apply if it is established to the satisfaction of the district director that such failure to file was due to a reasonable cause and not to willful neglect. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration that it is made under the penalties of perjury, setting forth all the facts alleged as a reasonable cause.

(b) *Alcohol and tobacco taxes.* For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see, generally, subtitle E of the Code.

§ 301.6653 Statutory provisions; failure to pay tax.

SEC. 6653. *Failure to pay tax*—(a) *Negligence or intentional disregard of rules and regulations with respect to income or gift taxes.* If any part of any underpayment (as defined in subsection (c) (1)) of any tax imposed by subtitle A or by chapter 12 of subtitle B (relating to income taxes and gift taxes) is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the tax an amount equal to 5 percent of the underpayment.

(b) *Fraud.* If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment. In the case of income taxes and gift taxes, this amount shall be in lieu of any amount determined under subsection (a).

(c) *Definition of underpayment.* For purposes of this section, the term "underpayment" means—

(1) *Income, estate, and gift taxes.* In the case of a tax to which section 6211 (relating to income, estate, and gift taxes) is applicable, a deficiency as defined in that section (except that, for this purpose, the tax shown on a return referred to in section 6211(a)(1)(A) shall be taken into account only if such return was filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing), and

(2) *Other taxes.* In the case of any other tax, the amount by which such tax imposed by this title exceeds the excess of—

(A) The sum of—

(i) The amount shown as the tax by the taxpayer upon his return (determined without regard to any credit for an overpayment for any prior period, and without regard to any adjustment under authority of sections 6205 (a) and 6413 (a)), if a return was made by the taxpayer within the time prescribed for filing such return (determined with regard to any extension of time for such filing) and an amount was shown as the tax by the taxpayer thereon, plus

(ii) Any amount, not shown on the return, paid in respect of such tax, over—

(B) The amount of rebates made.

For purposes of subparagraph (B), the term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed was less than the excess of the amount specified in subparagraph (A) over the rebates previously made.

(d) *No delinquency penalty if fraud assessed.* If any penalty is assessed under subsection (b) (relating to fraud) for an underpayment of tax which is required to be shown on a return, no penalty under section 6651 (relating to failure to file such return) shall be assessed with respect to the same underpayment.

(e) *Failure to pay stamp tax.* Any person (as defined in section 6671 (b)) who willfully fails to pay any tax imposed by this title which is payable by stamp, coupons, tickets, books, or other devices or methods prescribed by this title or by regulations under authority of this title, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax.

[Sec. 6653 as amended by sec. 86, Technical Amendments Act 1958 (72 Stat. 1665)]

§ 301.6653–1 Failure to pay tax.

(a) *Negligence or intentional disregard of rules and regulations with respect to income or gift taxes.* If any part of any underpayment, as defined in section 6653(c)(1) and paragraph (c)(1) of this section, of any income tax imposed by subtitle A of the Code, or gift tax imposed by chapter 12, subtitle B, of the Code, is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to 5 percent of the underpayment.

(b) *Fraud.* (1) If any part of any underpayment of tax, as defined in section 6653 (c) and paragraph (c) of this section, required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the underpayment.

(2) If a 50 percent addition to the tax for fraud is assessed under section 6653 (b) with respect to an underpayment—

(i) The addition to the tax under section 6651, relating to failure to file a tax return, will not be assessed with respect to the same underpayment, and

(ii) In the case of the income taxes imposed by subtitle A and the gift tax imposed by chapter 12 of subtitle B, the 5 percent addition to the tax under section 6653 (a), relating to negligence and intentional disregard of rules and regulations, will not be assessed with respect to the same underpayment.

(c) *Definition of underpayment*—(1) *Income, estate, and gift taxes.* In the case of income, estate, and gift taxes, an underpayment for purposes of section 6653 and this section is—

(i) The total amount of all deficiencies as defined in section 6211, if a return was filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return, or

(ii) The amount of the tax imposed by subtitle A or B, as the case may be, if a return was not filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return.

(2) *Other taxes.* In the case of any tax other than income, estate, and gift taxes, an underpayment for purposes of section 6653 and this section is the amount by which the tax imposed exceeds—

(i) In the case of any tax with respect to which the taxpayer is required to file a return, the sum of (*a*) the amount shown as tax by the taxpayer upon his return filed in respect of such tax, but only if the return is filed on or before the last date (determined with regard to any extension of time) prescribed for filing such return, plus (*b*) any amount not shown on a return filed by the taxpayer which is paid in respect of such tax prior to the date prescribed for filing the return. The "amount shown as tax by the taxpayer upon his return" for the purposes of this subparagraph shall be determined without regard to any credit for an overpayment for any prior tax return period, and without regard to any adjustment made under section 6205 (a), or section 6413 (a), relating to special rules applicable to certain employment taxes.

(ii) In the case of any tax payable by stamp, the amount paid (on or before the date prescribed for payment) in respect of such tax.

The amounts specified in subdivisions (i) and (ii) of this subparagraph shall be reduced, for purposes of determining the amount of the underpayment, by the amount of any rebates made. For purposes of this subparagraph, the term "rebates" means so much of an abatement, credit, refund, or other repayment as was made on the ground that the tax imposed was less than the excess of the amount specified in subdivision (i) or (ii) of this subparagraph, whichever is applicable, over any rebates previously made.

(d) *No delinquency penalty if fraud assessed.* See paragraph (b) (2) of this section.

(e) *Failure to pay stamp tax.* Any person (as defined in section 6671 (b)) who willfully fails to pay any tax payable by stamp, coupons, tickets, books or other devices or methods prescribed by the Code or regulations promulgated thereunder, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax.

§ 301.6654 Statutory provisions; failure by individual to pay estimated income tax.

SEC. 6654. *Failure by individual to pay estimated income tax*—(a) *Addition to the tax.* In the case of any underpayment of estimated tax by an individual, except as provided in subsection (d), there shall be added to the tax under chapter 1 for the taxable year an amount determined at the rate of 6 percent per annum upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).

(b) *Amount of underpayment.* For purposes of subsection (a), the amount of the underpayment shall be the excess of—

(1) The amount of the installment which would be required to be paid if the estimated tax were equal to 70 percent (66⅔ percent in the case of individuals referred to in section 6073 (b), relating to income from farming) of the tax shown on the return for the taxable year or, if no return was filed, 70 percent (66⅔ percent in the case of individuals referred to in section 6073 (b), relating to income from farming) of the tax for such year, over

(2) The amount, if any, of the installment paid on or before the last date prescribed for such payment.

(c) *Period of underpayment.* The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier—

(1) The 15th day of the fourth month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subsection (b) (1) for such installment date.

(d) *Exception.* Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following is the lesser—

(1) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least—

(A) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of 12 months, or

(B) An amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to personal exemptions under section 151 for the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year, or

(C) An amount equal to 70 percent (66⅔ percent in the case of individuals referred to in section 6073 (b), relating to income from farming) of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, the taxable income shall be placed on an annualized basis by—

(i) Multiplying by 12 (or, in the case of a taxable year of less than 12 months, the number of months in the taxable year) the taxable income (computed without deduction of personal exemptions) for the months in the taxable year ending before the month in which the installment is required to be paid,

(ii) Dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, and

(iii) Deducting from such amount the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the last date prescribed for payment of the installment); or

(2) An amount equal to 90 percent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.

(e) *Application of section in case of tax withheld on wages.* For purposes of applying this section—

(1) The estimated tax shall be computed without any reduction for the amount which the individual estimates as his credit under section 31 (relating to tax withheld at source on wages), and

(2) The amount of the credit allowed under section 31 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each installment date (determined under section 6153) for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(f) *Tax computed after application of credits against tax.* For purposes of subsections (b) and (d), the term "tax" means the tax imposed by chapter 1 reduced by the credits against tax allowed by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages).

(g) *Short taxable year.* The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

(h) *Applicability.* This section shall apply only with respect to taxable years beginning after December 31, 1954; and section 294 (d) of the Internal Revenue Code of 1939 shall continue in force with respect to taxable years beginning before January 1, 1955.

§ 301.6654–1 Failure by individual to pay estimated income tax.

For regulations under section 6654, see §§ 1.6654–1 to 1.6654–4, inclusive, of this chapter (Income Tax Regulations).

§ 301.6655 Statutory provisions; failure by corporation to pay estimated income tax.

SEC. 6655. *Failure by corporation to pay estimated income tax*—(a) *Addition to the tax.* In case of any underpayment of estimated tax by a corporation, except as provided in subsection (d), there shall be added to the tax under chapter 1 for the taxable year an amount determined at the rate of 6 percent per annum upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).

(b) *Amount of underpayment.* For purposes of subsection (a), the amount of the underpayment shall be the excess of—

(1) The amount of the installment which would be required to be paid if the estimated tax were equal to 70 percent of the tax shown on the return for the taxable year or, if no return was filed, 70 percent of the tax for such year, over

(2) The amount, if any, of the installment paid on or before the last date prescribed for payment.

(c) *Period of underpayment.* The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier—

(1) The 15th day of the third month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on the 15th day of the 12th month shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subsection (b) (1) for the 15th day of the 12th month.

(d) *Exception.* Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser—

(1) The tax shown on the return of the corporation for the preceding taxable year reduced by $100,000, if a return showing a liability for tax was filed by the corporation for the preceding taxable year and such preceding year was a taxable year of 12 months.

(2) An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.

(3) (A) An amount equal to 70 percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

(i) For the first 6 months or for the first 8 months of the taxable year, in the case of the installment required to be paid in the ninth month, and

(ii) For the first 9 months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the twelfth month.

(B) For purposes of this paragraph, the taxable income shall be placed on an annualized basis by—

(i) Multiplying by 12 the taxable income referred to in subparagraph (A), and

(ii) Dividing the resulting amount by the number of months in the taxable year (6 or 8, or 9 or 11, as the case may be) referred to in subparagraph (A).

(e) *Definition of tax.* For purposes of subsections (b), (d) (2), and (d) (3), the term "tax" means the excess of—

(1) The tax imposed by section 11 or 1201 (a), or subchapter L of chapter 1, whichever is applicable, over

(2) The sum of—

(A) $100,000, and

(B) The credits against tax provided in part IV of subchapter A of chapter 1.

(f) *Short taxable year.* The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Secretary or his delegate.

§ 301.6655–1 Failure by corporation to pay estimated income tax.

For regulations under section 6655, see §§ 1.6655–1 to 1.6655–3, inclusive, of this chapter (Income Tax Regulations).

§ 301.6656 Statutory provisions; failure to make deposit of taxes.

SEC. 6656. *Failure to make deposit of taxes*—(a) *Penalty.* In case of failure by any person required by this title or by regulation of the Secretary or his delegate under this title to deposit on the date prescribed therefor any amount of tax imposed by this title in such government depositary as is authorized under section 6302 (c) to receive such deposit, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty of 1 percent of the amount of the underpayment if the failure is for not more than 1 month, with an additional 1 percent for each additional month or fraction thereof during which such failure continues, not exceeding 6 percent in the aggregate. For purposes of this subsection, the term "underpayment" means the excess of the amount of the tax required to be so deposited over the amount, if any, thereof deposited on or before the date prescribed therefor.

(b) *Penalty not imposed after due date for return.* For purposes of subsection (a), the failure shall be deemed not to continue beyond the last date (determined without regard to any extension of time) prescribed for payment of the tax required to be deposited or beyond the date the tax is paid, whichever is earlier.

§ 301.6656–1 Failure to make deposit of taxes.

(a) *Penalty.* (1) In case of failure by any person required by the Code or regulations prescribed thereunder to deposit any tax in a government depositary, as is authorized under section 6302 (c), within the time prescribed therefor, a penalty shall be imposed on such person unless such failure is shown to the satisfaction of the district director to be due to reasonable cause and not to willful neglect. The penalty shall be one percent of the amount of the underpayment if the failure is for not more than one month, with an additional one percent for each additional month or fraction thereof during which failure continues, not to exceed 6 percent in the aggregate. For purposes of this section, the term "underpayment" means the amount of tax required to be deposited less the amount, if any, which was deposited on or before the date prescribed therefor, and the term "month" shall have the same meaning assigned to such term in paragraph (a) (2) of § 301.6651–1.

(2) A taxpayer who wishes to avoid the penalty for failure to deposit must make an affirmative showing of all facts alleged as a reasonable cause in a written statement containing a declaration that it is made under the penalties of perjury, which should be filed with the district director for the district in which the return with respect to the tax is required to be filed. If the district director determines that the delinquency was due to a reasonable cause, and not to willful neglect, the penalty will not be imposed.

(b) *Penalty not imposed after due date for return.* For the purpose of computing the amount of the penalty imposed by section 6656, the period of failure to make deposit is deemed not to continue beyond the last date (determined without regard to any extension of time) prescribed for payment of the tax required to be deposited, or beyond the date the tax is paid, whichever date is earlier. For example, during the months of January, February, and March 1955, the aggregate amount of the employee tax withheld under section 3102, the employer tax for each such month under section 3111, and the income tax withheld at source on wages under section 3402 (exclusive of the employee tax withheld under section 3102 and the employer tax under section 3111 with respect to wages of household employees), amount to $1,000 for each month. Under § 31.6302(c)–1 of this chapter (Employment Tax Regulations), the employer is required to deposit the $1,000 for January on or before February 15, 1955, and the $1,000 for February on or before March 15, 1955, but is not required to deposit the $1,000 for March 1955, prior to the date the return is due. The employer filed his quarterly return on April 30, 1955, the date prescribed for filing such return, accompanied by a remittance of $3,000. Assuming that the employer failed, without reasonable cause, to make timely deposits the penalty under section 6656 for failure to make the January deposit is $30, and the penalty for failure to make the February deposit is $20, computed as follows:

Amount required to be deposited on or before Feb. 15, 1955	$1,000
Less: Amount deposited	0
Underpayment	1,000
(1 percent penalty for each month or fraction thereof, Feb. 15, 1955 to Apr. 30, 1955, 3 months)	3%
Penalty for failure to make January deposit	$30
Amount required to be deposited on or before Mar. 15, 1955	$1,000
Less: Amount deposited	0
Underpayment	1,000
(1 percent penalty for each month or fraction thereof, Mar. 15, 1955 to Apr. 30, 1955, 2 months)	2%
Penalty for failure to make February deposit	20
Total penalty	50

§ 301.6657 Statutory provisions; bad checks.

SEC. 6657. *Bad checks.* If any check or money order in payment of any amount receivable under this title is not duly paid, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered such check, upon notice and demand by the Secretary or his delegate, in the same manner as tax, an amount equal to 1 percent of the amount of such check, except that if the amount of such check is less than $500, the penalty under this section shall be $5 or the amount of such check, whichever is the lesser. This section shall not apply if the person tendered such check in good faith and with reasonable cause to believe that it would be duly paid.

§ 301.6657–1 Bad checks.

(a) *In general.* Except as provided in paragraph (b) of this section, if a check or money order is tendered in the payment of any amount receivable under the Code, and such check or money order is not paid upon presentment, a penalty of one percent of the amount of the check or money order, in addition to any other penalties provided by law, shall be paid by the person who tendered such check or money order. If, however, the amount of the check or money order is less than $500, the penalty shall be $5 or the amount of the check or money order, whichever amount is the lesser. Such penalty shall be paid in the same manner as tax upon notice and demand by the district director.

(b) *Reasonable cause.* If payment is refused upon presentment of any check or money order and the person who tendered such check or money order establishes to the satisfaction of the district director that it was tendered in good faith with reasonable cause to believe that it would be duly paid, the penalty set forth in paragraph (a) of this section shall not apply.

§ 301.6658 Statutory provisions; addition to tax in case of jeopardy.

SEC. 6658. *Addition to tax in case of jeopardy.* If a taxpayer violates or attempts to violate section 6851 (relating to termination of taxable year) there shall, in addition to all other penalties, be added as part of the tax 25 percent of the total amount of the tax or deficiency in the tax.

§ 301.6658–1 Addition to tax in case of jeopardy.

Upon a finding by the district director that any taxpayer violated, or attempted to violate, section 6851 (relating to termination of taxable year) there shall, in addition to all other penalties, be added as part of the tax 25 percent of the total amount of the tax or deficiency in the tax.

§ 301.6659 Statutory provisions; applicable rules.

SEC. 6659. *Applicable rules*—(a) *Additions treated as tax.* Except as otherwise provided in this title—

(1) The additions to the tax, additional amounts, and penalties provided by this chapter shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes;

(2) Any reference in this title to "tax" imposed by this title shall be deemed also to refer to the additions to the tax, additional amounts, and penalties provided by this chapter.

(b) *Procedure for assessing certain additions to tax.* For purposes of subchapter B of chapter 63 (relating to deficiency procedures for income, estate, and gift taxes), subsection (a) shall not apply to any addition to tax under section 6651, 6654, or 6655; except that it shall apply—

(1) In the case of an addition described in section 6651, to that portion of such addition which is attributable to a deficiency in tax described in section 6211; or

(2) To an addition described in section 6654 or 6655, if no return is filed for the taxable year.

[Sec. 6659 as amended by sec. 1, Act of May 14, 1960 (Pub. Law 86–470, 74 Stat. 132)]

§ 301.6659–1 Applicable rules.

(a) *Additions treated as tax.* Except as otherwise provided in the Code, any reference in the Code to "tax" shall be deemed also to be a reference to any addition to the tax, additional amount, or penalty imposed by chapter 68 of the Code with respect to such tax. Such additions to the tax, additional amounts, and penalties shall become payable upon notice and demand therefor and shall be assessed, collected, and paid in the same manner as taxes.

(b) *Additions to tax for failure to file return or pay tax.* Any addition under section 6651 or section 6653 to a tax shall be considered a part of such tax for the purpose of the assessment and collection of such tax. For applicability of deficiency procedures to additions to the tax, see paragraph (c) of this section.

(c) *Deficiency procedures*—(1) *Addition to the tax for failure to file tax return.* Subchapter B, chapter 63, of the Code (deficiency procedures) applies to the additions to the income, estate, and gift taxes imposed by section 6651 for failure to file a tax return to the same extent that it applies to such taxes. Accordingly, if there is a deficiency (as defined in section 6211) in the tax (apart from the addition to the tax) where a return has not been timely filed, deficiency procedures apply to the addition to the tax under section 6651. If there is no deficiency in the tax where a return has not been timely filed, the addition to the tax under section 6651 may be assessed and collected without deficiency procedures. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). A filed his income tax return for the calendar year 1955 on May 15, 1956, not having been granted an extension of time for such filing. His failure to file on time was not due to reasonable cause. The return showed a liability of $1,000 and it was determined that A is liable under section 6651 for an addition to such tax of $50 (5 percent a month for 1 month). The provisions of subchapter B of chapter 63 (deficiency procedures) do not apply to the assessment and collection of the addition to the tax since such provisions are not applicable to the tax with respect to which such addition was asserted, there being no statutory deficiency for purposes of section 6211.

Example (2). Assume the same facts as in example (1) and assume further that a deficiency of $500 in tax and a further $25 addition to the tax under section 6651 is asserted against A for the calendar year 1955. Thus, the total addition to the tax under section 6651 is $75. Since the provisions of subchapter B of chapter 63 are applicable to the $500 deficiency, they likewise apply to the $25 addition to the tax asserted with respect to such deficiency (but not to the $50 addition to the tax under example (1)).

(2) *Additions to the tax for negligence or fraud.* Subchapter B of chapter 63 (deficiency procedures) applies to all additions to the income, estate, and gift taxes imposed by section 6653 (a) and (b) for negligence and fraud.

(3) *Additions to tax for failure to pay estimated income taxes*—(i) *Return filed by taxpayer.* The addition to the tax for underpayment of estimated income tax imposed by section 6654 (relating to failure by individuals to pay estimated income tax) or section 6655 (relating to failure by corporations to pay estimated income tax) is determined by reference to the tax shown on the return if a return is filed. Therefore, such addition may be assessed and collected without regard to the provisions of subchapter B of chapter 63 (deficiency procedures) if a return is filed since such provisions are not applicable to the assessment of the tax shown on the return. Further, since the additions to the tax imposed by section 6654 or 6655 are determined solely by reference to the amount of tax shown on the return if a return is filed, the assertion of a deficiency with respect to any tax not shown on such return will not make the provisions of subchapter B of chapter 63 (deficiency procedures) apply to the assessment and collection of any additions to the tax under section 6654 or 6655.

(ii) *No return filed by taxpayer.* If the taxpayer has not filed a return and his entire income tax liability is asserted as a deficiency to which the provisions of subchapter B of chapter 63 apply, such provisions likewise will apply to any addition to such tax imposed by section 6654 or 6655.

ASSESSABLE PENALTIES

§ 301.6671 Statutory provisions; rules for application of assessable penalties.

SEC. 6671. *Rules for application of assessable penalties*—(a) *Penalty assessed as tax.* The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary or his delegate, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter.

(b) *Person defined.* The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 301.6671–1 Rules for application of assessable penalties.

(a) *Penalty assessed as tax.* The penalties and liabilities provided by subchapter B, chapter 68, of the Code (sections 6671 to 6675, inclusive) shall be paid upon notice and demand by the district director and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in the Code to "tax" imposed thereunder shall also be deemed to refer to the penalties and liabilities provided by subchapter B of chapter 68.

(b) *Person defined.* For purposes of subchapter B of chapter 68, the term "person" includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 301.6672 Statutory provisions; failure to collect and pay over tax, or attempt to evade or defeat tax.

SEC. 6672. *Failure to collect and pay over tax, or attempt to evade or defeat tax.* Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 for any offense to which this section is applicable.

§ 301.6672–1 Failure to collect and pay over tax, or attempt to evade or defeat tax.

Any person required to collect, truthfully account for, and pay over any tax imposed by the Code who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. The penalty imposed by section 6672 applies only to the collection, accounting for, or payment over of taxes imposed on a person other than the per-

son who is required to collect, account for, and pay over such taxes. No penalty under section 6653, relating to failure to pay tax, shall be imposed for any offense to which this section is applicable.

§ 301.6673 Statutory provisions; damages assessable for instituting proceedings before the Tax Court merely for delay.

SEC. 6673. *Damages assessable for instituting proceedings before the Tax Court merely for delay.* Whenever it appears to the Tax Court that proceedings before it have been instituted by the taxpayer merely for delay, damages in an amount not in excess of $500 shall be awarded to the United States by the Tax Court in its decision. Damages so awarded shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Secretary or his delegate and shall be collected as a part of the tax.

§ 301.6673–1 Damages assessable for instituting proceedings before the Tax Court merely for delay.

Any damages awarded to the United States by the Tax Court under section 6673 against a taxpayer for instituting proceedings before the Tax Court merely for delay shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the district director and shall be collected as a part of the tax.

§ 301.6674 Statutory provisions; fraudulent statement or failure to furnish statement to employee.

SEC. 6674. *Fraudulent statement or failure to furnish statement to employee.* In addition to the criminal penalty provided by section 7204, any person required under the provisions of section 6051 to furnish a statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall for each such failure be subject to a penalty under this subchapter of $50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111.

§ 301.6674–1 Fraudulent statement or failure to furnish statement to employee.

For regulations under section 6674, see § 31.6674–1 of this chapter (Employment Tax Regulations).

§ 301.6675 Statutory provisions; excessive claims with respect to the use of certain gasoline.

SEC. 6675. *Excessive claims with respect to the use of certain gasoline*—(a) *Civil penalty.* In addition to any criminal penalty provided by law, if a claim is made under section 6420 (relating to gasoline used on farms) or 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems) for an excessive amount, unless it is shown that the claim for such excessive amount is due to reasonable cause, the person making such claim shall be liable to a penalty in an amount equal to whichever of the following is the greater:

(1) Two times the excessive amount; or

(2) $10.

(b) *Excessive amount defined.* For purposes of this section, the term "excessive amount" means in the case of any person the amount by which—

(1) The amount claimed under section 6420 or 6421, as the case may be, for any period, exceeds

(2) The amount allowable under such section for such period.

(c) *Assessment and collection of penalty.* For assessment and collection of penalty provided by subsection (a), see section 6206.

[Sec. 6675 as added by sec. 3, Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 90), and as amended by sec. 208 (d) (2), Highway Revenue Act 1956 (70 Stat. 396)]

§ 301.6675–1 Excessive claims with respect to the use of certain gasoline.

For regulations under section 6675, see § 48.6675–1 of this chapter (Manufacturers and Retailers Excise Tax Regulations).

General Provisions Relating to Stamps

§ 301.6801 Statutory provisions; authority for establishment, alteration, and distribution.

SEC. 6801. *Authority for establishment, alteration, and distribution*—(a) *Establishment and alteration.* The Secretary or his delegate may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the laws relating to internal revenue.

(b) *Preparation and distribution of regulations, forms, stamps and dies.* The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, and stamps; and shall provide proper and sufficient adhesive stamps and other stamps or dies for expressing and denoting the several stamp taxes.

§ 301.6801–1 Authority for establishment, alteration, and distribution.

(a) *Establishment and alteration.* The Commissioner may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the law relating to internal revenue.

(b) *Preparation and distribution of forms, stamps and dies.* The Commissioner shall prepare and distribute all the instructions, directions, forms, blanks, and stamps; and shall provide proper and sufficient adhesive stamps and other stamps or dies for expressing and denoting the several stamp taxes.

§ 301.6802 Statutory provisions; supply and distribution.

SEC. 6802. *Supply and distribution.* The Secretary or his delegate shall furnish, without prepayment, to—

(1) *Postmaster General.* The Postmaster General a suitable quantity of adhesive stamps (other than the stamps on playing cards), coupons, tickets, or such other devices as may be prescribed by the Secretary or his delegate pursuant to section 6302(b) or this chapter, to be distributed to, and kept on sale by, the various postmasters in the United States in all post offices of the first and second classes, and such post offices of the third and fourth classes as—

(A) Are located in county seats, or

(B) Are certified by the Secretary to the Postmaster General as necessary;

(2) *Designated depositary of the United States.* Any designated depositary of the United States a suitable quantity of adhesive stamps to be kept on sale by such designated depositary;

(3) *State agents.* Any person who is—

(A) Duly appointed and acting as agent of any State for the sale of stock transfer stamps of such State, and

(B) Designated by the Secretary or his delegate for the purpose,

a suitable quantity of such adhesive stamps as are required by section 4301, to be kept on sale by such person.

§ 301.6802–1 Supply and distribution.

(a) *Postmaster General.* The Commissioner shall furnish to the Postmaster General, without prepayment, a suitable quantity of adhesive stamps (other than the stamps on playing cards), coupons, tickets, or such other devices as may be prescribed pursuant to section 6302(b) (authorizing a discretionary method for collecting certain specified taxes) or chapter 69 of the Code, to be distributed to, and kept on sale by, the various postmasters in the United States in all post offices of the first and second classes, and such post offices of the third and fourth classes as are located in county seats or as are certified by the Secretary to the Postmaster General as necessary.

(b) *Designated depositary of the United States.* The district director for the district in which any designated depositary of the United States is located shall furnish to such designated depositary, without prepayment, a suitable quantity of adhesive stamps to be kept on sale by the designated depositary.

(c) *State agents.* Any person who is duly appointed and acting as agent of any State for the sale of stock transfer stamps of such State may make application to the district director for the district in which the State agent is located, to be designated for the purpose of being furnished without prepayment, for sale, stamps to be used in payment of the tax imposed by section 4301. The application shall contain the location and post office address of the State agent, and the maximum amount of stamps he desires to maintain on hand. A copy of the agent's appointment as State agent should be attached to the application.

§ 301.6803 Statutory provisions; accounting and safeguarding.

SEC. 6803. *Accounting and safeguarding*—(a) *The Postmaster General*—(1) *Bond and accounting.* The Postmaster General may require each postmaster under paragraph (1) of section 6802 to furnish bond in such increased amount as he may from time to time determine, and each such postmaster shall deposit the receipts from the sale of such stamps, coupons, tickets, books, or other devices, to the credit of, and render accounts to the Postmaster General at such times and in such form as the Postmaster General may by regulations prescribe.

(2) *Deposit of receipts.* The Postmaster General shall at least once a month transfer to the Treasury as internal revenue collections all receipts so deposited.

(b) *Depositaries and State agents*—(1) *Bond.* In cases coming within the provisions of paragraph (2) or (3) of section 6802, the Secretary or his delegate may require a bond, with sufficient sureties, in a sum to be fixed by the Secretary or his delegate, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of and for the payment monthly for all quantities or amounts sold or not remaining on hand.

(2) *Regulations.* The Secretary or his delegate may from time to time make such

§ 301.6658 Statutory provisions; addition to tax in case of jeopardy.

SEC. 6658. *Addition to tax in case of jeopardy.* If a taxpayer violates or attempts to violate section 6851 (relating to termination of taxable year) there shall, in addition to all other penalties, be added as part of the tax 25 percent of the total amount of the tax or deficiency in the tax.

§ 301.6658–1 Addition to tax in case of jeopardy.

Upon a finding by the district director that any taxpayer violated, or attempted to violate, section 6851 (relating to termination of taxable year) there shall, in addition to all other penalties, be added as part of the tax 25 percent of the total amount of the tax or deficiency in the tax.

§ 301.6659 Statutory provisions; applicable rules.

SEC. 6659. *Applicable rules*—(a) *Additions treated as tax.* Except as otherwise provided in this title—

(1) The additions to the tax, additional amounts, and penalties provided by this chapter shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes;

(2) Any reference in this title to "tax" imposed by this title shall be deemed also to refer to the additions to the tax, additional amounts, and penalties provided by this chapter.

(b) *Procedure for assessing certain additions to tax.* For purposes of subchapter B of chapter 63 (relating to deficiency procedures for income, estate, and gift taxes), subsection (a) shall not apply to any addition to tax under section 6651, 6654, or 6655; except that it shall apply—

(1) In the case of an addition described in section 6651, to that portion of such addition which is attributable to a deficiency in tax described in section 6211; or

(2) To an addition described in section 6654 or 6655, if no return is filed for the taxable year.

[Sec. 6659 as amended by sec. 1, Act of May 14, 1960 (Pub. Law 86–470, 74 Stat. 132)]

§ 301.6659–1 Applicable rules.

(a) *Additions treated as tax.* Except as otherwise provided in the Code, any reference in the Code to "tax" shall be deemed also to be a reference to any addition to the tax, additional amount, or penalty imposed by chapter 68 of the Code with respect to such tax. Such additions to the tax, additional amounts, and penalties shall become payable upon notice and demand therefor and shall be assessed, collected, and paid in the same manner as taxes.

(b) *Additions to tax for failure to file return or pay tax.* Any addition under section 6651 or section 6653 to a tax shall be considered a part of such tax for the purpose of the assessment and collection of such tax. For applicability of deficiency procedures to additions to the tax, see paragraph (c) of this section.

(c) *Deficiency procedures*—(1) *Addition to the tax for failure to file tax return.* Subchapter B, chapter 63, of the Code (deficiency procedures) applies to the additions to the income, estate, and gift taxes imposed by section 6651 for failure to file a tax return to the same extent that it applies to such taxes. Accordingly, if there is a deficiency (as defined in section 6211) in the tax (apart from the addition to the tax) where a return has not been timely filed, deficiency procedures apply to the addition to the tax under section 6651. If there is no deficiency in the tax where a return has not been timely filed, the addition to the tax under section 6651 may be assessed and collected without deficiency procedures. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). A filed his income tax return for the calendar year 1955 on May 15, 1956, not having been granted an extension of time for such filing. His failure to file on time was not due to reasonable cause. The return showed a liability of $1,000 and it was determined that A is liable under section 6651 for an addition to such tax of $50 (5 percent a month for 1 month). The provisions of subchapter B of chapter 63 (deficiency procedures) do not apply to the assessment and collection of the addition to the tax since such provisions are not applicable to the tax with respect to which such addition was asserted, there being no statutory deficiency for purposes of section 6211.

Example (2). Assume the same facts as in example (1) and assume further that a deficiency of $500 in tax and a further $25 addition to the tax under section 6651 is asserted against A for the calendar year 1955. Thus, the total addition to the tax under section 6651 is $75. Since the provisions of subchapter B of chapter 63 are applicable to the $500 deficiency, they likewise apply to the $25 addition to the tax asserted with respect to such deficiency (but not to the $50 addition to the tax under example (1)).

(2) *Additions to the tax for negligence or fraud.* Subchapter B of chapter 63 (deficiency procedures) applies to all additions to the income, estate, and gift taxes imposed by section 6653 (a) and (b) for negligence and fraud.

(3) *Additions to tax for failure to pay estimated income taxes*—(i) *Return filed by taxpayer.* The addition to the tax for underpayment of estimated income tax imposed by section 6654 (relating to failure by individuals to pay estimated income tax) or section 6655 (relating to failure by corporations to pay estimated income tax) is determined by reference to the tax shown on the return if a return is filed. Therefore, such addition may be assessed and collected without regard to the provisions of subchapter B of chapter 63 (deficiency procedures) if a return is filed since such provisions are not applicable to the assessment of the tax shown on the return. Further, since the additions to the tax imposed by section 6654 or 6655 are determined solely by reference to the amount of tax shown on the return if a return is filed, the assertion of a deficiency with respect to any tax not shown on such return will not make the provisions of subchapter B of chapter 63 (deficiency procedures) apply to the assessment and collection of any additions to the tax under section 6654 or 6655.

(ii) *No return filed by taxpayer.* If the taxpayer has not filed a return and his entire income tax liability is asserted as a deficiency to which the provisions of subchapter B of chapter 63 apply, such provisions likewise will apply to any addition to such tax imposed by section 6654 or 6655.

ASSESSABLE PENALTIES

§ 301.6671 Statutory provisions; rules for application of assessable penalties.

SEC. 6671. *Rules for application of assessable penalties*—(a) *Penalty assessed as tax.* The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary or his delegate, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter.

(b) *Person defined.* The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 301.6671–1 Rules for application of assessable penalties.

(a) *Penalty assessed as tax.* The penalties and liabilities provided by subchapter B, chapter 68, of the Code (sections 6671 to 6675, inclusive) shall be paid upon notice and demand by the district director and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in the Code to "tax" imposed thereunder shall also be deemed to refer to the penalties and liabilities provided by subchapter B of chapter 68.

(b) *Person defined.* For purposes of subchapter B of chapter 68, the term "person" includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 301.6672 Statutory provisions; failure to collect and pay over tax, or attempt to evade or defeat tax.

SEC. 6672. *Failure to collect and pay over tax, or attempt to evade or defeat tax.* Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 for any offense to which this section is applicable.

§ 301.6672–1 Failure to collect and pay over tax, or attempt to evade or defeat tax.

Any person required to collect, truthfully account for, and pay over any tax imposed by the Code who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. The penalty imposed by section 6672 applies only to the collection, accounting for, or payment over of taxes imposed on a person other than the per-

son who is required to collect, account for, and pay over such taxes. No penalty under section 6653, relating to failure to pay tax, shall be imposed for any offense to which this section is applicable.

§ 301.6673 Statutory provisions; damages assessable for instituting proceedings before the Tax Court merely for delay.

SEC. 6673. *Damages assessable for instituting proceedings before the Tax Court merely for delay.* Whenever it appears to the Tax Court that proceedings before it have been instituted by the taxpayer merely for delay, damages in an amount not in excess of $500 shall be awarded to the United States by the Tax Court in its decision. Damages so awarded shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Secretary or his delegate and shall be collected as a part of the tax.

§ 301.6673–1 Damages assessable for instituting proceedings before the Tax Court merely for delay.

Any damages awarded to the United States by the Tax Court under section 6673 against a taxpayer for instituting proceedings before the Tax Court merely for delay shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the district director and shall be collected as a part of the tax.

§ 301.6674 Statutory provisions; fraudulent statement or failure to furnish statement to employee.

SEC. 6674. *Fraudulent statement or failure to furnish statement to employee.* In addition to the criminal penalty provided by section 7204, any person required under the provisions of section 6051 to furnish a statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall for each such failure be subject to a penalty under this subchapter of $50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111.

§ 301.6674–1 Fraudulent statement or failure to furnish statement to employee.

For regulations under section 6674, see § 31.6674–1 of this chapter (Employment Tax Regulations).

§ 301.6675 Statutory provisions; excessive claims with respect to the use of certain gasoline.

SEC. 6675. *Excessive claims with respect to the use of certain gasoline*—(a) *Civil penalty.* In addition to any criminal penalty provided by law, if a claim is made under section 6420 (relating to gasoline used on farms) or 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems) for an excessive amount, unless it is shown that the claim for such excessive amount is due to reasonable cause, the person making such claim shall be liable to a penalty in an amount equal to whichever of the following is the greater:

(1) Two times the excessive amount; or

(2) $10.

(b) *Excessive amount defined.* For purposes of this section, the term "excessive amount" means in the case of any person the amount by which—

(1) The amount claimed under section 6420 or 6421, as the case may be, for any period, exceeds

(2) The amount allowable under such section for such period.

(c) *Assessment and collection of penalty.* For assessment and collection of penalty provided by subsection (a), see section 6206.

[Sec. 6675 as added by sec. 3, Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 90), and as amended by sec. 208 (d) (2), Highway Revenue Act 1956 (70 Stat. 396)]

§ 301.6675–1 Excessive claims with respect to the use of certain gasoline.

For regulations under section 6675, see § 48.6675–1 of this chapter (Manufacturers and Retailers Excise Tax Regulations).

General Provisions Relating to Stamps

§ 301.6801 Statutory provisions; authority for establishment, alteration, and distribution.

SEC. 6801. *Authority for establishment, alteration, and distribution*—(a) *Establishment and alteration.* The Secretary or his delegate may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the laws relating to internal revenue.

(b) *Preparation and distribution of regulations, forms, stamps and dies.* The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, and stamps; and shall provide proper and sufficient adhesive stamps and other stamps or dies for expressing and denoting the several stamp taxes.

§ 301.6801–1 Authority for establishment, alteration, and distribution.

(a) *Establishment and alteration.* The Commissioner may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the law relating to internal revenue.

(b) *Preparation and distribution of forms, stamps and dies.* The Commissioner shall prepare and distribute all the instructions, directions, forms, blanks, and stamps; and shall provide proper and sufficient adhesive stamps and other stamps or dies for expressing and denoting the several stamp taxes.

§ 301.6802 Statutory provisions; supply and distribution.

SEC. 6802. *Supply and distribution.* The Secretary or his delegate shall furnish, without prepayment, to—

(1) *Postmaster General.* The Postmaster General a suitable quantity of adhesive stamps (other than the stamps on playing cards), coupons, tickets, or such other devices as may be prescribed by the Secretary or his delegate pursuant to section 6302(b) or this chapter, to be distributed to, and kept on sale by, the various postmasters in the United States in all post offices of the first and second classes, and such post offices of the third and fourth classes as—

(A) Are located in county seats, or

(B) Are certified by the Secretary to the Postmaster General as necessary;

(2) *Designated depositary of the United States.* Any designated depositary of the United States a suitable quantity of adhesive stamps to be kept on sale by such designated depositary;

(3) *State agents.* Any person who is—

(A) Duly appointed and acting as agent of any State for the sale of stock transfer stamps of such State, and

(B) Designated by the Secretary or his delegate for the purpose,

a suitable quantity of such adhesive stamps as are required by section 4301, to be kept on sale by such person.

§ 301.6802–1 Supply and distribution.

(a) *Postmaster General.* The Commissioner shall furnish to the Postmaster General, without prepayment, a suitable quantity of adhesive stamps (other than the stamps on playing cards), coupons, tickets, or such other devices as may be prescribed pursuant to section 6302(b) (authorizing a discretionary method for collecting certain specified taxes) or chapter 69 of the Code, to be distributed to, and kept on sale by, the various postmasters in the United States in all post offices of the first and second classes, and such post offices of the third and fourth classes as are located in county seats or as are certified by the Secretary to the Postmaster General as necessary.

(b) *Designated depositary of the United States.* The district director for the district in which any designated depositary of the United States is located shall furnish to such designated depositary, without prepayment, a suitable quantity of adhesive stamps to be kept on sale by the designated depositary.

(c) *State agents.* Any person who is duly appointed and acting as agent of any State for the sale of stock transfer stamps of such State may make application to the district director for the district in which the State agent is located, to be designated for the purpose of being furnished without prepayment, for sale, stamps to be used in payment of the tax imposed by section 4301. The application shall contain the location and post office address of the State agent, and the maximum amount of stamps he desires to maintain on hand. A copy of the agent's appointment as State agent should be attached to the application.

§ 301.6803 Statutory provisions; accounting and safeguarding.

SEC. 6803. *Accounting and safeguarding*—(a) *The Postmaster General*—(1) *Bond and accounting.* The Postmaster General may require each postmaster under paragraph (1) of section 6802 to furnish bond in such increased amount as he may from time to time determine, and each such postmaster shall deposit the receipts from the sale of such stamps, coupons, tickets, books, or other devices, to the credit of, and render accounts to the Postmaster General at such times and in such form as the Postmaster General may by regulations prescribe.

(2) *Deposit of receipts.* The Postmaster General shall at least once a month transfer to the Treasury as internal revenue collections all receipts so deposited.

(b) *Depositaries and State agents*—(1) *Bond.* In cases coming within the provisions of paragraph (2) or (3) of section 6802, the Secretary or his delegate may require a bond, with sufficient sureties, in a sum to be fixed by the Secretary or his delegate, conditioned for the faithful return, whenever so required, of all quantities or amounts undisposed of and for the payment monthly for all quantities or amounts sold or not remaining on hand.

(2) *Regulations.* The Secretary or his delegate may from time to time make such

regulations as he may find necessary to insure the safekeeping or prevent the illegal use of all adhesive stamps referred to in paragraphs (2) and (3) of section 6802.

§ 301.6803–1 Accounting and safeguarding.

In cases coming within the provisions of section 6802 (2) and (3) and paragraphs (b) and (c) of § 301.6802–1, the district director may require a bond in such amount as he deems advisable, conditioned for the faithful return, whenever so required, of all quantities or amounts of adhesive stamps undisposed of and for the payment monthly for all quantities or amounts of adhesive stamps sold or not remaining on hand. Such bond shall be furnished in accordance with the provisions contained in section 7101 and § 301.7101–1.

§ 301.6804 Statutory provisions; attachment and cancellation.

SEC. 6804. *Attachment and cancellation.* Except as otherwise expressly provided in this title, the stamps referred to in section 6801 shall be attached, protected, removed, cancelled, obliterated, and destroyed, in such manner and by such instruments or other means as the Secretary or his delegate may prescribe by rules or regulations.

§ 301.6804–1 Attachment and cancellation.

For provisions relating to the attachment and cancellation of specific stamps used with respect to a particular tax, see the regulations relating to such tax.

§ 301.6805 Statutory provisions; redemption of stamps.

SEC. 6805. *Redemption of stamps*—(a) *Authorization.* The Secretary or his delegate, subject to regulations prescribed by him, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of any internal revenue law, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use.

(b) *Method and conditions of allowance.* Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Secretary or his delegate, or until satisfactory proof has been made showing the reason why the same cannot be returned; or, if so required by the Secretary or his delegate, when the person presenting the same cannot satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

(c) *Time for filing claims.* No claim for the redemption of, or allowance for, stamps shall be allowed under this section unless presented within 3 years after the purchase of such stamps from the Government.

(d) *Finality of decisions.* The findings of fact in and the decision of the Secretary or his delegate upon the merits of any claim presented under or authorized by this section shall, in the absence of fraud or mistake in mathematical calculation, be final, and not subject to revision by any accounting officer.

[Sec. 6805 as amended by sec. 165 (b), (c), Excise Tax Technical Changes Act 1958 (72 Stat. 1313)]

§ 301.6805–1 Redemption of stamps.

(a) *Authorization.* (1) Upon receipt of satisfactory evidence of the facts by the district director, he may make allowance for or redeem stamps issued under the authority of any internal revenue law if—

(i) The stamps have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or

(ii) The owner of the stamps has no use therefor.

(2) If a stamp has been in use for any period of time, it may not be redeemed under section 6805. Similarly, no allowance shall be made for stamps which have been lost or stolen.

(3) For submission of claims for allowance or redemption of certain alcohol and tobacco tax stamps to an assistant regional commissioner (alcohol and tobacco taxes), see subtitle E of the Code and the regulations in Subchapter E of this chapter (Alcohol, Tobacco, and Other Excise Taxes).

(b) *Method and conditions of allowance.* Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof. Claims for the redemption of or allowance for stamps shall be made on Form 843 and filed with the district director within three years from the date of the purchase of the stamps from the Government. The stamps for which redemption or allowance is claimed shall be submitted with the claim. If the stamps are destroyed or damaged to the extent that they cannot be presented for redemption or allowance, proof satisfactory to the district director that they have been destroyed or so damaged must accompany the claim before allowance or redemption shall be made. In any case where the actual date of purchase of the stamps from the Government cannot be established, it must be definitely shown in the claim whether they were so purchased within three years prior to the date of filing of the claim.

(c) *Time for filing claims.* No claim for the redemption of, or allowance for, stamps shall be allowed under this section unless presented within 3 years after the purchase of such stamps from the Government.

(d) *Finality of decisions.* The findings of fact in and the decision of the district director upon the merits of any claim presented under or authorized by this section, shall in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer.

§ 301.6806. Statutory provisions; posting occupational tax stamps.

SEC. 6806. *Posting occupational tax stamps*—(a) *General rule.* Every person engaged in any business, avocation, or employment, who is thereby made liable to a special tax, shall place and keep conspicuously in his establishment or place of business all stamps denoting payment of said special tax.

(b) *Coin-operated amusement and gaming devices.* The Secretary or his delegate may by regulations require that the stamps denoting the payment of the special tax imposed by section 4461 shall be posted on or in each device in such a manner that it will be visible to any person operating the device.

(c) *Occupational wagering tax.* Every person liable for special tax under section 4411 shall place and keep conspicuously in his principal place of business the stamp denoting the payment of such special tax; except that if he has no such place of business, he shall keep such stamp on his person, and exhibit it, upon request, to any officer or employee of the Treasury Department.

§ 301.6806–1 Posting occupational tax stamps.

For provisions relating to the posting of specific stamps used with respect to a particular tax, see the regulations relating to such tax. For penalties for failure to post occupational tax stamps, see section 7273.

§ 301.6807 Statutory provisions; stamping, marking, and branding seized goods.

SEC. 6807. *Stamping, marking, and branding seized goods.* If any article of manufacture or produce requiring brands, stamps, or marks of whatever kind to be placed thereon, is sold upon levy, forfeiture (except as provided in section 5688 with respect to distilled spirits), or other process provided by law, the same not having been branded, stamped, or marked, as required by law, the officer selling the same shall, upon sale thereof, fix or cause to be affixed the brands, stamps, or marks so required.

§ 301.6808 Statutory provisions; special provisions relating to stamps.

SEC. 6808. *Special provisions relating to stamps.* For special provisions on stamps relating to—

(1) Capital stock, see chapter 34.

(2) Cotton futures, see subchapter D of chapter 39.

(3) Distilled spirits and fermented liquors, see chapter 51.

(4) Documents and other instruments, see chapter 34.

(5) Filled cheese, see subchapter C of chapter 39.

(6) Machine guns and short-barrelled firearms, see chapter 53.

(7) Oleomargarine, see subchapter F of chapter 38.

(8) Opium, opium for smoking, opiates and coca leaves, and marihuana, see subchapter A of chapter 39.

(9) Playing cards, see subchapter A of chapter 36.

(10) Process, renovated, or adulterated butter, see subchapter C of chapter 39.

(11) Silver bullion, see subchapter F of chapter 39.

(12) Tobacco, snuff, cigars and cigarettes, see chapter 52.

(13) White phosphorus matches, see subchapter B of chapter 39.

Jeopardy, Bankruptcy and Receiverships

JEOPARDY

TERMINATION OF TAXABLE YEAR

§ 301.6851 Statutory provisions; termination of taxable year.

SEC. 6851. *Termination of taxable year*—(a) *Income tax in jeopardy*—(1) *In general.* If the Secretary or his delegate finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly

ineffectual proceedings to collect the income tax for the current or the preceding taxable year unless such proceedings be brought without delay, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated, and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the finding of the Secretary or his delegate, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of jeopardy.

(2) *Corporation in liquidation.* If the Secretary or his delegate finds that the collection of the income tax of a corporation for the current or the preceding taxable year will be jeopardized by the distribution of all or a portion of the assets of such corporation in the liquidation of the whole or any part of its capital stock, the Secretary or his delegate shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable.

(b) *Reopening of taxable period.* Notwithstanding the termination of the taxable period of the taxpayer by the Secretary or his delegate, as provided in subsection (a), the Secretary or his delegate may reopen such taxable period each time the taxpayer is found by the Secretary or his delegate to have received income, within the current taxable year, since a termination of the period under subsection (a). A taxable period so terminated by the Secretary or his delegate may be reopened by the taxpayer (other than a nonresident alien) if he files with the Secretary or his delegate a true and accurate return of the items of gross income and of the deductions and credits allowed under this title for such taxable period, together with such other information as the Secretary or his delegate may by regulations prescribe. If the taxpayer is a nonresident alien the taxable period so terminated may be reopened by him if he files, or causes to be filed, with the Secretary or his delegate a true and accurate return of his total income derived from all sources within the United States, in the manner prescribed in this title.

(c) *Citizens.* In the case of a citizen of the United States or of a possession of the United States about to depart from the United States, the Secretary or his delegate may, at his discretion, waive any or all of the requirements placed on the taxapayer by this section.

(d) *Departure of alien.* Subject to such exceptions as may, by regulations, be prescribed by the Secretary or his delegate—

(1) No alien shall depart from the United States unless he first procures from the Secretary or his delegate a certificate that he has complied with all the obligations imposed upon him by the income tax laws.

(2) Payment of taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such taxes if, in the case of an alien about to depart from the United States, the Secretary or his delegate determines that the collection of the tax will not be jeopardized by the departure of the alien.

(e) *Furnishing of bond where taxable year is closed by the Secretary or his delegate.* Payment of taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such taxes if the taxpayer furnishes, under regulations prescribed by the Secretary or his delegate, a bond to insure the timely making of returns with respect to, and payment of, such taxes or any income or excess profits taxes for prior years.

[Sec. 6851 as amended by sec. 87, Technical Amendments Act 1958 (72 Stat. 1665)]

§ 301.6851–1 Termination of taxable year.

For regulations under section 6851, see §§ 1.6851–1 to 1.6851–3, inclusive, of this chapter (Income Tax Regulations).

JEOPARDY ASSESSMENTS

§ 301.6861 Statutory provisions; jeopardy assessments of income, estate, and gift taxes.

SEC. 6861. *Jeopardy assessments of income, estate, and gift taxes.*—(a) *Authority for making.* If the Secretary or his delegate believes that the assessment or collection of a deficiency, as defined in section 6211, will be jeopardized by delay, he shall, notwithstanding the provisions of section 6213 (a), immediately assess such deficiency (together with all interest, additional amounts, and additions to the tax provided for by law), and notice and demand shall be made by the Secretary or his delegate for the payment thereof.

(b) *Deficiency letters.* If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under section 6212 (a), then the Secretary or his delegate shall mail a notice under such subsection within 60 days after the making of the assessment.

(c) *Amount assessable before decision of Tax Court.* The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the taxpayer, despite the provisions of section 6212 (c) prohibiting the determination of additional deficiencies, and whether or not the taxpayer has theretofore filed a petition with the Tax Court. The Secretary or his delegate may, at any time before the decision of the Tax Court is rendered, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount. The Secretary or his delegate shall notify the Tax Court of the amount of such assessment, or abatement, if the petition is filed with the Tax Court before the making of the assessment or is subsequently filed, and the Tax Court shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) *Amount assessable after decision of* Tax Court. If the jeopardy assessment is made after the decision of the Tax Court is rendered, such assessment may be made only in respect of the deficiency determined by the Tax Court in its decision.

(e) *Expiration of right to assess.* A jeopardy assessment may not be made after the decision of the Tax Court has become final or after the taxpayer has filed a petition for review of the decision of the Tax Court.

(f) *Collection of unpaid amounts.* When the petition has been filed with the Tax Court and when the amount which should have been assessed has been determined by a decision of the Tax Court which has become final, then any unpaid portion, the collection of which has been stayed by bond as provided in section 6863 (b) shall be collected as part of the tax upon notice and demand from the Secretary or his delegate, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in section 6402, without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the Secretary or his delegate.

(g) *Abatement if jeopardy does not exist.* The Secretary or his delegate may abate the jeopardy assessment if he finds that jeopardy does not exist. Such abatement may not be made after a decision of the Tax Court in respect of the deficiency has been rendered or, if no petition is filed with the Tax Court, after the expiration of the period for filing such petition. The period of limitation on the making of assessments and levy or a proceeding in court for collection, in respect of any deficiency, shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the 10th day after the day on which such jeopardy assessment is abated.

(h) *Cross references.* (1) For the effect of the furnishing of security for payment, see section 6863.

(2) For provision permitting immediate levy in case of jeopardy, see section 6331 (a).

§ 301.6861–1 Jeopardy assessments of income, estate, and gift taxes.

(a) *Authority for making.* If a district director believes that the assessment or collection of a deficiency in income, estate, or gift tax will be jeopardized by delay, he is required to assess such deficiency immediately, together with the interest, additional amounts, and additions to the tax provided by law. A jeopardy assessment may be made before or after the mailing of the notice of deficiency provided by section 6212. However, a jeopardy assessment for a taxable year under section 6861 cannot be made after a decision of the Tax Court with respect to such taxable year has become final (see section 7481) or after the taxpayer has filed a petition for review of the decision of the Tax Court with respect to such taxable year. In the case of a deficiency determined by a decision of the Tax Court which has become final or with respect to which the taxpayer has filed a petition for review and has not filed a bond as provided in section 7485, assessment may be made in accordance with the provisions of sec-

(b) *Amount of jeopardy assessment.* tion 6215, without regard to section 6861. If a notice of a deficiency is mailed to the taxpayer before it is discovered that delay would jeopardize the assessment or collection of the tax, a jeopardy assessment may be made in an amount greater or less than that included in the deficiency notice. If a deficiency is assessed on account of jeopardy after the decision of the Tax Court is rendered, the jeopardy assessment may be made only with respect to the deficiency determined by the Tax Court.

(c) *Jurisdiction of Tax Court.* If the jeopardy assessment is made before the notice in respect of the tax to which the jeopardy assessment relates has been mailed pursuant to section 6212 (a), the district director shall, within 60 days after the making of the assessment, send the taxpayer a notice of deficiency pursuant to such subsection. The taxpayer may file a petition with the Tax Court for a redetermination of the amount of the deficiency within the time prescribed in section 6213 (a). If the petition of the taxpayer is filed with the Tax Court, either before or after the making of the jeopardy assessment, the Commissioner, through his counsel, is required to notify the Tax Court of such assessment or of any abatement thereof, and the Tax Court has jurisdiction to redetermine the amount of the deficiency, together with all other amounts assessed at the same time in connection therewith.

(d) *Payment and collection of jeopardy assessment.* After a jeopardy assessment has been made, the district director is required to send notice and demand to the taxpayer for the amount of the jeopardy assessment. Regardless of whether the taxpayer has filed a petition with the Tax Court, he is required to make payment of the amount of such assessment (to the extent that it has not been abated) within 10 days after the sending of notice and demand by the district director, unless before the expiration of such 10-day period he files with the district director a bond as provided in section 6863. Section 6331 provides that, if the district director makes a finding that the collection of the tax is in jeopardy, he may make demand for immediate payment of the amount of the jeopardy assessment and, in such case, the taxpayer shall immediately pay such amount or shall immediately file the bond provided in section 6863. If a petition is not filed with the Tax Court within the period prescribed in section 6213 (a), the district director will be so advised, and, if collection of the deficiency has been stayed by the timely filing of a bond as provided in section 6863, he should then give notice and make demand for payment of the amount assessed plus interest. After the Tax Court has rendered its decision and such decision has become final, the district director will be notified of the action taken. He will then send notice and demand for payment of the unpaid portion of the amount determined by the Tax Court, the collection of which has been stayed by the bond. If the amount of the jeopardy assessment is less than the amount determined by the Tax Court, the difference will be assessed and collected as part of the tax upon notice and demand from the district director. If the amount of the jeopardy assessment is in excess of the amount determined by the Tax Court, the unpaid portion of such excess will be abated. If any part of the excess amount has been paid, it will be credited or refunded to the taxpayer as provided in section 6402, without the filing of claim therefor.

(e) *Abatement of excessive assessment.* The district director may, at any time before the decision of the Tax Court is rendered, abate such assessment, or any unpaid portion thereof, to the extent that he believes the assessment to be excessive in amount.

(f) *Abatement if jeopardy does not exist.* (1) The district director may abate a jeopardy assessment in whole or in part, if it is shown to his satisfaction that jeopardy does not exist. An abatement may not be made under this paragraph after a decision of the Tax Court in respect of the deficiency has been rendered or, if no petition is filed with such court, after the expiration of the period for filing such petition.

(2) After abatement of a jeopardy assessment in whole or in part, the district director may proceed to assess and collect a deficiency in the manner authorized by law as if the jeopardy assessment or part thereof so abated had not existed. If a notice of deficiency has been sent to the taxpayer before the abatement of the jeopardy assessment in whole or in part, whether such notice was sent before or after the making of the assessment, such abatement will not affect the validity of the notice or of any proceedings for redetermination based thereon. The period of limitation on the making of assessments and the beginning of levy or a proceeding in court for collection in respect of any deficiency shall be determined as if the jeopardy assessment so abated had not been made, except that the running of such period shall in any event be suspended for the period from the date of such jeopardy assessment until the expiration of the tenth day after the date on which such jeopardy assessment is abated in whole or in part. The provisions of this subparagraph may be illustrated by the following example:

Example. On March 18, 1958, 28 days before the last day of the 3-year period of limitations on assessment, a jeopardy assessment is made in respect of a proposed deficiency. On May 2, 1958, before the mailing of the notice of deficiency provided by section 6861 (b), this assessment is abated. By virtue of this subparagraph, the last day of the period of limitations for the making of an assessment is June 9, 1958, that is, the thirty-eighth day after the date of the abatement. If the notice of deficiency provided for in section 6861 (b) had been sent before the abatement, the running of the period of limitations on assessment would have been suspended pursuant to the provisions of section 6503 (a).

(3) Request for abatement of a jeopardy assessment, because jeopardy does not exist, shall be filed with the district director, shall state fully the reasons for the request, and shall be supported by such evidence as will enable the district director to determine that the collection of the deficiency is not in jeopardy. See paragraph (e) of this section with respect to the abatement of jeopardy assessments which are excessive in amount.

§ 301.6862 Statutory provisions; jeopardy assessment of taxes other than income, estate, and gift taxes.

SEC. 6862. *Jeopardy assessment of taxes other than income, estate, and gift taxes*—(a) *Immediate assessment.* If the Secretary or his delegate believes that the collection of any tax (other than income tax, estate tax, and gift tax) under any provision of the internal revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest, additional amounts, and additions to the tax provided for by law). Such tax, additions to the tax, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the Secretary or his delegate for the payment thereof.

(b) *Immediate levy.* For provision permitting immediate levy in case of jeopardy, see section 6331 (a).

§ 301.6862–1 Jeopardy assessment of taxes other than income, estate, and gift taxes.

(a) If the district director believes that the collection of any tax (other than income, estate, or gift tax) will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for filing the return or paying such tax has expired, immediately assess such tax, together with all interest, additional amounts and additions to the tax provided by law. For example, assume that a taxpayer incurs on January 18, 1955, liability for admissions tax imposed by section 4231, that the last day on which return and payment of such tax is required to be made is April 30, 1955, and that on January 18, 1955, the district director determines that collection of such tax would be jeopardized by delay. In such case, the district director shall immediately assess the tax.

(b) The tax, interest, additional amounts, and additions to the tax will, upon assessment, become immediately due and payable, and the district director shall, without delay, issue a notice and demand for payment thereof in full. Upon failure or refusal to pay the amount demanded, collection thereof by levy shall be lawful without regard to the 10-day period provided in section 6331 (a). However, the collection of the whole or any part of the amount of the jeopardy assessment may be stayed by timely filing with the district director a bond as provided in section 6863.

§ 301.6863 Statutory provisions; stay of collection of jeopardy assessments.

SEC. 6863. *Stay of collection of jeopardy assessments*—(a) *Bond to stay collection.* When a jeopardy assessment has been made under section 6861 or 6862, the collection of the whole or any amount of such assessment may be stayed by filing with the Secretary or his delegate, within such time as may be fixed by regulations prescribed by the Secretary or his delegate, a bond in an amount equal to the amount as to which the stay is desired, conditioned upon the payment of the amount (together with interest thereon) the collection of which is stayed, at the time at which, but for the making of the jeopardy assessment, such amount would be due. Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The taxpayer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If any portion of the jeopardy assessment is abated, the bond shall, at the request of the taxpayer, be proportionately reduced.

(b) *Further conditions in case of income, estate, or gift taxes.* In the case of taxes subject to the jurisdiction of the Tax Court—

(1) *Prior to petition to Tax Court.* If the bond is given before the taxpayer has filed his petition under section 6213 (a), the bond shall contain a further condition that if a petition is not filed within the period provided in such section, then the amount, the collection of which is stayed by the bond, will be paid on notice and demand at any time after the expiration of such period, together with interest thereon from the date of the jeopardy notice and demand to the date of notice and demand under this paragraph.

(2) *Effect of Tax Court decision.* The bond shall be conditioned upon the payment of so much of such assessment (collection of which is stayed by the bond) as is not abated by a decision of the Tax Court which has become final. If the Tax Court determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Tax Court is rendered the bond shall, at the request of the taxpayer, be proportionately reduced.

(3) *Stay of sale of seized property pending Tax Court decision*—(A) *General rule.* Where, notwithstanding the provisions of section 6213 (a), a jeopardy assessment has been made under section 6861 the property seized for the collection of the tax shall not be sold—

(i) if section 6861 (b) is applicable, prior to the issuance of the notice of deficiency and the expiration of the time provided in section 6213 (a) for filing petition with the Tax Court, and

(ii) if petition is filed with the Tax Court (whether before or after the making of such jeopardy assessment under section 6861), prior to the expiration of the period during which the assessment of the deficiency would be prohibited if section 6861 (a) were not applicable.

(B) *Exceptions.* Such property may be sold if—

(i) the taxpayer consents to the sale,

(ii) the Secretary or his delegate determines that the expenses of conservation and maintenance will greatly reduce the net proceeds, or

(iii) the property is of the type described in section 6336.

(C) *Applicability.* Subparagraphs (A) and (B) shall be applicable only with respect to a jeopardy assessment made on or after January 1, 1955, and shall apply with respect to taxes imposed by this title and with respect to taxes imposed by the Internal Revenue Code of 1939.

§ 301.6863–1 Stay of collection of jeopardy assessments; bond to stay collection.

(a) *General rule.* (1) The collection of a jeopardy assessment of any tax may be stayed by filing with the district director a bond on the form to be furnished by the district director upon request.

(2) The bond may be filed—

(i) At any time before the time collection by levy is authorized under section 6331 (a), or

(ii) After collection by levy is authorized and before levy is made on any property or rights to property, or

(iii) In the discretion of the district director, after any such levy has been made and before the expiration of the period of limitations on collection.

(3) The bond must be in an amount equal to the portion (including interest thereon to the date of payment as calculated by the district director) of the jeopardy assessment collection of which is sought to be stayed. See section 7101 and § 301.7101–1, relating to the form of bond and the sureties thereon. The bond shall be conditioned upon the payment of the amount (together with interest thereon), the collection of which is stayed, at the time at which, but for the making of the jeopardy assessment, such amount would be due.

(4) Upon the filing of a bond in accordance with this section, the collection of so much of the assessment as is covered by the bond will be stayed. The taxpayer may at any time waive the stay of collection of the whole or any part of the amount covered by the bond. If as a result of such waiver any part of the amount covered by the bond is paid, or if any portion of the jeopardy assessment is abated by the district director, then the bond shall at the request of the taxpayer be proportionately reduced.

(b) *Additional conditions applicable to income, estate, and gift tax assessments.* In the case of a jeopardy assessment of income, estate, or gift tax, the bond must be conditioned upon the payment of so much of the amount included therein as is not abated by a decision of the Tax Court which has become final, together with the interest on such amount. If the Tax Court determines that the amount assessed is greater than the correct amount of the tax, the bond will be proportionately reduced at the request of the taxpayer after the Tax Court renders its decision. If the bond is given before the taxpayer has filed his petition with the Tax Court, it must contain a further condition that if a petition is not filed before the expiration of the period provided in section 6213 (a) for the filing of such petition, the amount stayed by the bond will be paid upon notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 percent per annum from the date of the jeopardy notice and demand to the date of the notice and demand made after the expiration of the period for filing petition with the Tax Court.

§ 301.6863–2 Collection of jeopardy assessment; stay of sale of seized property pending Tax Court decision.

(a) *General rule.* In the case of a jeopardy assessment made after December 31, 1954, of income, estate, or gift tax imposed by the Internal Revenue Code of 1954 or the Internal Revenue Code of 1939, any property seized for the collection of such assessment shall not (except as provided in paragraph (b) of this section) be sold—

(1) Until the expiration of the period provided in section 6213 (a) within which the taxpayer may file a petition for redetermination with the Tax Court, and

(2) If a petition for redetermination is filed with the Tax Court (whether before or after the making of the jeopardy assessment), until the decision of the Tax Court becomes final, except that a petition for review of the Tax Court decision will not operate as a further stay of the sale of the seized property unless the taxpayer files a bond as provided in section 7485.

(b) *Exceptions.* Notwithstanding the provisions of paragraph (a) of this section, any property seized may be sold—

(1) If the taxpayer files with the district director a written consent to the sale, or

(2) If the district director determines that the expenses of conservation and maintenance of the property will greatly reduce the net proceeds from the sale of such property, or

(3) If the property is of a type to which section 6336 (relating to sale of perishable goods) is applicable.

§ 301.6864 Statutory provisions; termination of extended period for payment in case of carryback.

SEC. 6864. *Termination of extended period for payment in case of carryback.* For termination of extensions of time for payment of income tax granted to corporations expecting carrybacks in case of jeopardy, see section 6164 (h).

BANKRUPTCY AND RECEIVERSHIPS

§ 301.6871(a) Statutory provisions; claims for income, estate, and gift taxes in bankruptcy and receivership proceedings; immediate assessment.

SEC. 6871. *Claims for income, estate, and gift taxes in bankruptcy and receivership proceedings*—(a) *Immediate assessment.* Upon the adjudication of bankruptcy of any taxpayer in any liquidating proceeding, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other bankruptcy proceeding, or the appointment of a receiver for any taxpayer in any receivership proceeding before any court of the United States or of any State or Territory or of the District of Columbia, any deficiency (together with all interest, additional amounts, or additions to the tax provided by law) determined by the Secretary or his delegate in respect of a tax imposed by subtitle A or B upon such taxpayer shall, despite the restrictions imposed by section 6213(a) upon assessments, be immediately assessed if such deficiency has not theretofore been assessed in accordance with law.

[Sec. 6871(a) as amended by sec. 88(a), Technical Amendments Act 1958 (72 Stat. 1665)]

§ 301.6871(a)–1 Immediate assessment of claims for income, estate, and gift taxes in bankruptcy and receivership proceedings.

(a) Upon (1) the adjudication of bankruptcy of any taxpayer in any liquidating proceeding, (2) the filing with a court of competent jurisdiction or (where approval is required by the Bankruptcy Act, 11 U.S.C. chs. 1–14) the approval of a petition of, or the approval of a petition against, any taxpayer in any other proceeding under the Bankruptcy Act, or (3) the appointment of any receiver for any taxpayer in a receivership proceeding before any court of the United States or of any State or Territory or of the District of Columbia, the district director shall immediately assess any deficiency of income, estate, or gift tax (together with all interest, additional amounts, or additions to the tax provided by law), determined by him, if such deficiency has not heretofore been assessed in accordance with law. Such assessment shall be made immediately, whether or not a notice of deficiency has been issued, and without regard to the

restrictions upon assessment under section 6213.

(b) As used in this section and §§ 301.6871(a)–2 to 301.6873–1, inclusive, the term "proceeding under the Bankruptcy Act" includes a proceeding under chapters I to VII, inclusive, of the Bankruptcy Act, or under section 75 or 77 (11 U.S.C. 203, 205), or chapters X to XIII, inclusive, of such Act, or any other proceeding under the Act.

§ 301.6871(a)–2 Collection of assessed taxes in bankruptcy and receivership proceedings.

(a) During a proceeding under the Bankruptcy Act (11 U.S.C. chs. 1–14) or a receivership proceeding in either a Federal or State court, generally the assets of the taxpayer are under the control of the court in which such proceeding is pending, and the collection of taxes cannot be made by leving upon such assets. However, any assets which under applicable provisions of law are not under the control of the court may be subject to levy. See paragraph (b) of this section and § 301.6871 (b)–1 with respect to claims for such taxes. See section 6873 with respect to collection of unpaid claims.

(b) District directors should, promptly after ascertaining the existence of any outstanding liability against a taxpayer in any proceeding under the Bankruptcy Act or in any receivership proceeding, and in any event within the time limited by the appropriate provisions of the Bankruptcy Act, or by the appropriate orders of the court in which such proceeding is pending, file proof of claim covering such liability in the court in which such proceeding is pending. Such proof of claim should be filed whether the unpaid taxes involved have been assessed or not, except in cases where the instructions of the Commissioner direct otherwise; for example, where the payment of the taxes is secured by a sufficient bond. At the same time proof of claim is filed with the bankruptcy or receivership court, the district director will send notice and demand for payment to the taxpayer, together with a copy of such proof of claim.

(c) Under sections 3466 and 3467 of the Revised Statutes (31 U.S.C. 191, 192) and section 64 of the Bankruptcy Act (11 U.S.C. 104), taxes are entitled to the priority over other claims therein specified, and the trustee, receiver, debtor in possession, or other person designated as in control of the assets of the debtor by the court in which the proceeding under the Bankruptcy Act or receivership proceeding is pending, may be held personally liable for failure on his part to protect the priority of the Government respecting taxes of which he has notice. Sections 75 (l), 77 (e), 199, 337 (2), 455, and 659 (6) of the Bankruptcy Act (11 U. S. C. 203 (l), 205 (e), 599, 737 (2), 855, and 1059 (6)) also contain provisions with respect to the rights of the United States relative to priority of payment. For the filing of returns by a trustee in bankruptcy or by a receiver, see section 6012 (b) (3) and 28 U. S. C. 960. Bankruptcy courts have jurisdiction under the Bankruptcy Act to determine all disputes regarding the amount and validity of taxes claimed in a proceeding under the Bankruptcy Act. A proceeding under the Bankruptcy Act or a receivership proceeding does not discharge any portion of a claim of the United States for taxes except in the case of a proceeding under section 77 or chapter X of the Bankruptcy Act. However, the claim may be settled or compromised as in other cases in court.

(d) For the requirement that a receiver, trustee in bankruptcy, or other like fiduciary give notice as to his qualification as such, see section 6036 and the regulations thereunder.

§ 301.6871(b) Statutory provisions; claims for income, estate, and gift taxes in bankruptcy and receivership proceedings; claim filed despite pendency of Tax Court proceedings.

SEC. 6871. *Claims for income, estate, and gift taxes in bankruptcy and receivership proceedings.* * * *

(b) *Claim filed despite pendency of Tax Court proceedings.* In the case of a tax imposed by subtitle A or B claims for the deficiency and such interest, additional amounts, and additions to the tax may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of proceedings for the redetermination of the deficiency in pursuance of a petition to the Tax Court; but no petition for any such redetermination shall be filed with the Tax Court after the adjudication of bankruptcy, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other bankruptcy proceeding, or the appointment of the receiver.

[Sec. 6871(b) as amended by sec. 88(b), Technical Amendments Act 1958 (72 Stat. 1665)]

§ 301.6871(b)–1 Claims for income, estate, and gift taxes in proceedings under the Bankruptcy Act and receivership proceedings; claim filed despite pendency of Tax Court proceedings.

(a) If it is determined that a deficiency is due in respect of income, estate, or gift tax and the taxpayer has filed a petition with the Tax Court before (1) the adjudication of bankruptcy in any liquidating proceeding, (2) the filing with a court of competent jurisdiction or (where approval is required by the Bankruptcy Act, 11 U.S.C. chs. 1–14) the approval of a petition of, or the approval of a petition against, any taxpayer in any other proceeding under the Bankruptcy Act, or (3) the appointment of a receiver, the trustee, receiver, debtor in possession, or other like fiduciary, may, upon his own motion, be made a party to the Tax Court proceeding and thereafter may prosecute the appeal before the Tax Court as to that particular determination. No petition shall be filed with the Tax Court for a redetermination of the deficiency after the adjudication of bankruptcy, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other bankruptcy proceeding, or the appointment of the receiver.

(b) Even though the determination of a deficiency is pending before the Tax Court for redetermination, proof of claim for the amount of such deficiency may be filed with the court in which the proceeding under the Bankruptcy Act or receivership proceeding is pending without awaiting final decision of the Tax Court. In case of a final decision of the Tax Court before the payment or the disallowance of the claim in the proceeding under the Bankruptcy Act or receivership proceeding, a copy of the Tax Court's decision may be filed by the district director with the court in which such proceeding is pending.

(c) While a district director is required by section 6871(a) and paragraph (a) of § 301.6871(a)–1 to make immediate assessment of any deficiency, such assessment is not made as a jeopardy assessment within the meaning of section 6861, and consequently the provisions of that section do not apply to any assessment made under section 6871. Therefore, the notice of deficiency provided in section 6861(b) will not be mailed. Although such notice will not be issued, a letter will be sent to the taxpayer or to the trustee, receiver, debtor in possession, or other like fiduciary, notifying him in detail how the deficiency was computed, that he may furnish evidence showing wherein the deficiency is incorrect, and that upon request he will be granted a conference by the district director with respect to such deficiency. However, such letter will not provide for such a conference where a petition was filed with the Tax Court before (1) the adjudication of bankruptcy in a liquidating proceeding, (2) the filing with a court of competent jurisdiction or (where approval is required by the Bankruptcy Act), the approval of a petition of, or the approval of a petition against, any taxpayer in any other proceeding under the Bankruptcy Act, or (3) the appointment of a receiver.

§ 301.6872 Statutory provisions; suspension of period on assessment.

SEC. 6872. *Suspension of period on assessment.* If the regulations issued pursuant to section 6036 require the giving of notice by any fiduciary in any proceeding under the Bankruptcy Act, or by a receiver in any other court proceeding, to the Secretary or his delegate of his qualification as such, the running of the period of limitations on the making of assessments shall be suspended for the period from the date of the institution of the proceeding to a date 30 days after the date upon which the notice from the receiver or other fiduciary is received by the Secretary or his delegate; but the suspension under this sentence shall in no case be for a period in excess of 2 years.

§ 301.6872–1 Suspension of running of period of limitations on assessment.

If any fiduciary in any proceeding under the Bankruptcy Act (11 U.S.C. chs. 1–14), including a trustee, receiver, or debtor in possession, or a receiver in any other court proceeding is required, pursuant to section 6036, to give notice in writing to the district director of his qualification as such, then the running of the period of limitations on assess-

ment shall be suspended from the date the proceeding is instituted to the date such notice is received by the district director, and for an additional 30 days thereafter. However, the suspension under this section of the running of the period of limitation on assessment shall in no case exceed 2 years.

§ 301.6873 Statutory provisions; unpaid claims.

SEC. 6873. *Unpaid claims*—(a) *General rule.* Any portion of a claim for taxes allowed in a receivership proceeding or any proceeding under the Bankruptcy Act which is unpaid shall be paid by the taxpayer upon notice and demand from the Secretary or his delegate after the termination of such proceeding.

(b) *Cross references.* (1) For suspension of running of period of limitations on collection, see section 6503 (b).

(2) For extension of time for payment, see section 6161 (c).

§ 301.6873–1 Unpaid claims in bankruptcy or receivership proceedings.

(a) If any portion of the claim allowed by the court in a receivership proceeding, or in any proceeding under the Bankruptcy Act (11 U.S.C. chs. 1–14) remains unpaid after the termination of such proceeding, the district director will send notice and demand for payment thereof to the taxpayer. Such unpaid portion with interest as provided in section 6601 may be collected from the taxpayer by levy or proceeding in court within the period of limitation for collection after assessment. For the general rule as to such period of limitation, see section 6502, and for suspension of the running of the period provided in section 6502, see, for example, section 6503. For suspensions under other provisions of law, see, for example, section 11f of the Bankruptcy Act (11 U.S.C. 29(f)). Extension of time for the payment of such unpaid amount may be granted in the same manner and subject to the same provisions and limitations as provided in section 6161(c).

(b) Section 6873 is applicable only where a claim for taxes is allowed in a receivership proceeding or in a proceeding under the Bankruptcy Act. Claims for taxes, interest, additional amounts, or additions to the tax may be collectible in equity or under other provisions of law although no claim was allowed in the proceeding because, for example, such items were not included in a proof of claim filed in the proceeding or no proof of claim was filed. Except in the case of a proceeding under section 77 or chapter X of the Bankruptcy Act, a tax or a liability in respect thereof is not discharged by a proceeding under such act, whether or not a claim is filed in such proceeding, and provisions suspending the running of the period of limitation on the collection of taxes are applicable, whether or not a claim is filed in such proceeding.

Transferees and Fiduciaries

§ 301.6901 Statutory provisions; transferred assets.

SEC. 6901. *Transferred assets*—(a) *Method of collection.* The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, paid, and collected in the same manner and subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred:

(1) *Income, estate, and gift taxes*—(A) *Transferees.* The liability, at law or in equity, of a transferee of property—

(i) Of a taxpayer in the case of a tax imposed by subtitle A (relating to income taxes),

(ii) Of a decedent in the case of a tax imposed by chapter 11 (relating to estate taxes), or

(iii) Of a donor in the case of a tax imposed by chapter 12 (relating to gift taxes), in respect of the tax imposed by subtitle A or B.

(B) *Fiduciaries.* The liability of a fiduciary under section 3467 of the Revised Statutes (31 U. S. C. 192) in respect of the payment of any tax described in subparagraph (A) from the estate of the taxpayer, the decedent, or the donor, as the case may be.

(2) *Other taxes.* The liability, at law or in equity of a transferee of property of any person liable in respect of any tax imposed by this title (other than a tax imposed by subtitle A or B), but only if such liability arises on the liquidation of a partnership or corporation, or on a reorganization within the meaning of section 368 (a).

(b) *Liability.* Any liability referred to in subsection (a) may be either as to the amount of tax shown on a return or as to any deficiency or underpayment of any tax.

(c) *Period of limitations.* The period of limitations for assessment of any such liability of a transferee or a fiduciary shall be as follows:

(1) *Initial transferee.* In the case of the liability of an initial transferee, within 1 year after the expiration of the period of limitation for assessment against the transferor;

(2) *Transferee of transferee.* In the case of the liability of a transferee of a transferee, within 1 year after the expiration of the period of limitation for assessment against the preceding transferee, but not more than 3 years after the expiration of the period of limitation for assessment against the initial transferor;

except that if, before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the initial transferor or the last preceding transferee, respectively, then the period of limitation for assessment of the liability of the transferee shall expire 1 year after the return of execution in the court proceeding.

(3) *Fiduciary.* In the case of the liability of a fiduciary, not later than 1 year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later.

(d) *Extension by agreement.* (1) *Extension of time for assessment.* If before the expiration of the time prescribed in subsection (c) for the assessment of the liability, the Secretary or his delegate and the transferee or fiduciary have both consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. For the purpose of determining the period of limitation on credit or refund to the transferee or fiduciary of overpayments of tax made by such transferee or fiduciary or overpayments of tax made by the transferor of which the transferee or fiduciary is legally entitled to credit or refund, such agreement and any extension thereof shall be deemed an agreement and extension thereof referred to in section 6511 (c).

(2) *Extension of time for credit or refund.* If the agreement is executed after the expiration of the period of limitation for assessment against the taxpayer with reference to whom the liability of such transferee or fiduciary arises, then in applying the limitations under section 6511 (c) on the amount of the credit or refund, the periods specified in section 6511 (b) (2) shall be increased by the period from the date of such expiration to the date of the agreement.

(e) *Period for assessment against transferor.* For purposes of this section, if any person is deceased, or is a corporation which has terminated its existence, the period of limitation for assessment against such person shall be the period that would be in effect had death or termination of existence not occurred.

(f) *Suspension of running of period of limitations.* The running of the period of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing to the transferee or fiduciary of the notice provided for in section 6212 (relating to income, estate, and gift taxes), be suspended for the period during which the Secretary or his delegate is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

(g) *Address for notice of liability.* In the absence of notice to the Secretary or his delegate under section 6903 of the existence of a fiduciary relationship, any notice of liability enforceable under this section required to be mailed to such person, shall, if mailed to the person subject to the liability at his last known address, be sufficient for purposes of this title, even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(h) *Definition of transferee.* As used in this section, the term "transferee" includes donee, heir, legatee, devisee, and distributee, and with respect to estate taxes, also includes any person who, under section 6324 (a) (2), is personally liable for any part of such tax.

(i) *Extension of time.* For extensions of time by reason of armed service in a combat zone, see section 7508.

§ 301.6901–1 Procedure in the case of transferred assets.

(a) *Method of collection*—(1) *Income, estate, and gift taxes.* The amount for which a transferee of property of—

(i) A taxpayer, in the case of a tax imposed by subtitle A of the Code (relating to income taxes),

(ii) A decedent, in the case of the estate tax imposed by chapter 11 of the Code, or

(iii) A donor, in the case of the gift tax imposed by chapter 12 of the Code,

is liable, at law or in equity, and the amount of the personal liability of a fiduciary under section 3467 of the Revised Statutes, as amended (31 U. S. C. 192), in respect of the payment of such taxes, whether shown on the return of the taxpayer or determined as a deficiency in the tax, shall be assessed against such transferee or fiduciary and paid and collected in the same manner and subject to the same provisions and limitations as in the case of a deficiency in the tax with respect to which such

liability is incurred, except as hereinafter provided.

(2) *Other taxes.* The liability, at law or in equity, of a transferee of property of any person liable in respect of any other tax, in any case where the liability of the transferee arises on the liquidation of a corporation or partnership, or a corporate reorganization within the meaning of section 368 (a), shall be assessed against such transferee and paid and collected in the same manner and subject to the same provisions and limitations as in the case of the tax with respect to which such liability is incurred, except as hereinafter provided.

(3) *Applicable provisions.* The provisions of the Code made applicable by section 6901 (a) to the liability of a transferee or fiduciary referred to in subparagraphs (1) and (2) of this paragraph include the provisions relating to:

(i) Delinquency in payment after notice and demand and the amount of interest attaching because of such delinquency;

(ii) The authorization of distraint and proceedings in court for collection;

(iii) The prohibition of claims and suits for refund; and

(iv) In any instance in which the liability of a transferee or fiduciary is one referred to in subparagraph (1) of this paragraph, the filing of a petition with the Tax Court of the United States and the filing of a petition for review of the Tax Court's decision.

For detailed provisions relating to assessments, collections, and refunds, see chapters 63, 64, and 65 of the Code, respectively.

(b) *Definition of transferee.* As used in this section, the term "transferee" includes an heir, legatee, devisee, distributee of an estate of a deceased person, the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation, a party to a reorganization as defined in section 368, and all other classes of distributees. Such term also includes, with respect to the gift tax, a donee (without regard to the solvency of the donor) and, with respect to the estate tax, any person who, under section 6324 (a) (2), is personally liable for any part of such tax.

(c) *Period of limitation on assessment.* The period of limitation for assessment of the liability of a transferee or of a fiduciary is as follows:

(1) *Initial transferee.* In the case of the liability of an initial transferee, one year after the expiration of the period of limitation for assessment against the taxpayer in the case of a tax imposed by subtitle A (relating to income taxes), the executor in the case of the estate tax imposed by Chapter 11, or the donor in the case of the gift tax imposed by chapter 12, each of which for purposes of this section is referred to as the "taxpayer" (see subchapter A, chapter 66, of the Code).

(2) *Transferee of transferee.* In the case of the liability of a transferee of a transferee, one year after the expiration of the period of limitation for assessment against the preceding transferee, or three years after the expiration of the period of limitation for assessment against the taxpayer, whichever of such periods first expires.

(3) *Court proceeding against taxpayer or last preceding transferee.* If, before the expiration of the period specified in subparagraph (1) or subparagraph (2) of this paragraph (whichever is applicable), a court proceeding against the taxpayer or last preceding transferee for the collection of the tax or liability in respect thereof, respectively, has been begun within the period of limitation for the commencement of such proceeding, then within one year after the return of execution in such proceeding.

(4) *Fiduciary.* In the case of the liability of a fiduciary, not later than one year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later.

(d) *Extension by agreement*—(1) *Extension of time for assessment.* The time prescribed by section 6901 for the assessment of the liability of a transferee or fiduciary may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the transferee or fiduciary and the district director or an assistant regional commissioner. The extension shall become effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(2) *Extension of time for credit or refund.* (i) For the purpose of determining the period of limitation on credit or refund to the transferee or fiduciary of overpayments made by such transferee or fiduciary or overpayments made by the taxpayer to which such transferee or fiduciary may be legally entitled to credit or refund, an agreement and any extension thereof referred to in subparagraph (1) of this paragraph shall be deemed an agreement and extension thereof for purposes of section 6511 (c) (relating to limitations on credit or refund in case of extension of time by agreement).

(ii) For the purpose of determining the limit specified in section 6511 (c) (2) on the amount of the credit or refund, if the agreement is executed after the expiration of the period of limitation for assessment against the taxpayer with reference to whom the liability of such transferee or fiduciary arises, the periods specified in section 6511 (b) (2) shall be increased by the period from the date of such expiration to the date the agreement is executed. The application of this subdivision may be illustrated by the following example:

EXAMPLE. Assume that Corporation A files its income tax return on March 15, 1955, for the calendar year 1954, showing a liability of $100,000 which is paid with the return. The period within which an assessment may be made against Corporation A expires on March 15, 1958. Corporation B is a transferee of Corporation A. An agreement is executed on October 9, 1958, extending, beyond its normal expiration date of March 15, 1959, the period within which an assessment may be made against Corporation B. Under section 6511 (c) (2) and section 6511 (b) (2) (A) the portion of an overpayment, paid before the execution of an agreement extending the period for assessment, may not be credited or refunded unless paid within three years prior to the date on which the agreement is executed. However, as applied to Corporation B such 3-year period is increased under section 6901 (d) (2) to include the period from March 15, 1958, to October 9, 1958, the date on which the agreement was executed.

(e) *Period of assessment against taxpayer.* For the purpose of determining the period of limitation for assessment against a transferee or a fiduciary, if the taxpayer is deceased, or, in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had the death or termination of existence not occurred.

(f) *Suspension of running of period of limitations.* In the cases of the income, estate, and gift taxes, if a notice of the liability of a transferee or the liability of a fiduciary has been mailed to such transferee or to such fiduciary under the provisions of section 6212, then the running of the statute of limitations shall be suspended for the period during which the district director is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Tax Court, until the decision of the Tax Court becomes final), and for 60 days thereafter.

§ 301.6902 Statutory provisions; provisions of special application to transferees.

SEC. 6902. *Provisions of special application to transferees*—(a) *Burden of proof.* In proceedings before the Tax Court the burden of proof shall be upon the Secretary or his delegate to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax.

(b) *Evidence.* Upon application to the Tax Court, a transferee of property of a taxpayer shall be entitled, under rules prescribed by the Tax Court, to a preliminary examination of books, papers, documents, correspondence, and other evidence of the taxpayer or a preceding transferee of the taxpayer's property, if the transferee making the application is a petitioner before the Tax Court for the redetermination of his liability in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer. Upon such application, the Tax Court may require by subpoena, ordered by the Tax Court or any division thereof and signed by a judge, the production of all such books, papers, documents, correspondence, and other evidence within the United States the production of which, in the opinion of the Tax Court or division thereof, is necessary to enable the transferee to ascertain the liability of the taxpayer or preceding transferee and will not result in undue hardship to the taxpayer or preceding transferee. Such examination shall be had at such time and place as may be designated in the subpoena.

§ 301.6902–1 Burden of proof.

In proceedings before the Tax Court the burden of proof shall be upon the Commissioner to show that a petitioner is liable as a transferee of property of a

taxpayer, but not to show that the taxpayer was liable for the tax.

§ 301.6903 Statutory provisions; notice of fiduciary relationship.

SEC. 6903. *Notice of fiduciary relationship*—(a) *Rights and obligations of fiduciary.* Upon notice to the Secretary or his delegate that any person is acting for another person in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties, and privileges of such other person in respect of a tax imposed by this title (except as otherwise specifically provided and except that the tax shall be collected from the estate of such other person), until notice is given that the fiduciary capacity has terminated.

(b) *Manner of notice.* Notice under this section shall be given in accordance with regulations prescribed by the Secretary or his delegate.

§ 301.6903–1 Notice of fiduciary relationship.

(a) *Rights and obligations of fiduciary.* Every person acting for another person in a fiduciary capacity shall give notice thereof to the district director in writing. As soon as such notice is filed with the district director such fiduciary must, except as otherwise specifically provided, assume the powers, rights, duties, and privileges of the taxpayer with respect to the taxes imposed by the Code. If the person is acting as a fiduciary for a transferee or other person subject to the liability specified in section 6901, such fiduciary is required to assume the powers, rights, duties, and privileges of the transferee or other person under that section. The amount of the tax or liability is ordinarily not collectible from the personal estate of the fiduciary but is collectible from the estate of the taxpayer or from the estate of the transferee or other person subject to the liability specified in section 6901.

(b) *Manner of notice.* The notice shall be signed by the fiduciary, and shall be filed with the district director for the district where the return of the person for whom the fiduciary is acting is required to be filed. The notice must state the name and address of the person for whom the fiduciary is acting, and the nature of the liability of such person; that is, whether it is a liability for tax, and, if so, the type of tax, the year or years involved, or a liability at law or in equity of a transferee of property of a taxpayer, or a liability of a fiduciary under section 3467 of the Revised Statutes, as amended (31 U. S. C. 192), in respect of the payment of any tax from the estate of the taxpayer. Satisfactory evidence of the authority of the fiduciary to act for any other person in a fiduciary capacity must be filed with and made a part of the notice. If the fiduciary capacity exists by order of court, a certified copy of the order may be regarded as satisfactory evidence. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the district director with whom the notice of fiduciary relationship was filed written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. The notice of termination should state the name and address of the person, if any, who has been substituted as fiduciary. Any written notice disclosing a fiduciary relationship which has been filed with the Commissioner under the Internal Revenue Code of 1939 or any prior revenue law shall be considered as sufficient notice within the meaning of section 6903. Any satisfactory evidence of the authority of the fiduciary to act for another person already filed with the Commissioner or district director need not be resubmitted.

(c) *Where notice is not filed.* If the notice of the fiduciary capacity described in paragraph (b) of this section is not filed with the district director before the sending of notice of a deficiency by registered mail or certified mail to the last known address of the taxpayer (see section 6212), or the last known address of the transferee or other person subject to liability (see section 6901(g)), no notice of the deficiency will be sent to the fiduciary. In such a case the sending of the notice to the last known address of the taxpayer, transferee, or other person, as the case may be, will be a sufficient compliance with the requirements of the Code, even though such taxpayer, transferee, or other person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence. Under such circumstances, if no petition is filed with the Tax Court of the United States within 90 days after the mailing of the notice (or within 150 days after mailing in the case of such a notice addressed to a person outside the States of the Union and the District of Columbia) to the taxpayer, transferee, or other person, the tax, or liability under section 6901, will be assessed immediately upon the expiration of such 90-day or 150-day period, and demand for payment will be made by the district director. See paragraph (a) of § 301.6213–1 with respect to the expiration of such 90-day or 150-day period.

(d) *Definition of fiduciary.* The term "fiduciary" is defined in section 7701(a)(6) to mean a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(e) *Applicability of other provisions.* This section, relating to the provisions of section 6903, shall not be taken to abridge in any way the powers and duties of fiduciaries provided for in other sections of the Code.

§ 301.6904 Statutory provisions; prohibition of injunctions.

SEC. 6904. *Prohibition of injunctions.* For prohibition of suits to restrain enforcement of liability of transferee, or fiduciary, see section 7421 (b).

Licensing and Registration

LICENSING

§ 301.7001 Statutory provisions; collection of foreign items.

SEC. 7001. *Collection of foreign items*—(a) *License.* All persons undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Secretary or his delegate and shall be subject to such regulations enabling the Government to obtain the information required under subtitle A (relating to income taxes) as the Secretary or his delegate shall prescribe.

(b) *Penalty for failure to obtain license.* For penalty for failure to obtain the license provided for in this section, see section 7231.

§ 301.7001–1 License to collect foreign items.

(a) *In general.* Any bank or agent undertaking as a matter of business or for profit the collection of foreign items must obtain a license from the district director for the district in which is located its principal place of business within the United States. For definitions of the terms "foreign item" and "collection", see paragraph (b) of this section.

(b) *Definitions*—(1) *Foreign item.* The term "foreign item", as used in this section, means any item of interest upon the bonds of a foreign country or of a nonresident foreign corporation not having a fiscal or paying agent in the United States (including Puerto Rico as if a part of the United States), or any item of dividends upon the stock of such corporation.

(2) *Collection.* The term "collection", as used in this section, includes the following:

(i) The payment by the licensee of the foreign item in cash;

(ii) The crediting by the licensee of the account of the person presenting the foreign item;

(iii) The tentative crediting by the licensee of the account of the person presenting the foreign item until the amount of the foreign item is received by the licensee from abroad; and

(iv) The receipt of foreign items by the licensee for the purpose of transmitting them abroad for deposits.

(c) *Application for license.* Application for the license required by paragraph (a) of this section shall be made in writing and shall contain the following information:

(1) The name and present business of the person, partnership (including names of all partners), or corporation applying for the license;

(2) The address of the applicant's principal place of business in the United States and of any branch offices in the United States;

(3) The date on which the applicant intends to commence the collection of foreign items; and

(4) An estimate of the aggregate amount of annual collections of foreign items (in dollars).

The application shall be signed by the applicant (a partner, in the case of a partnership, or an officer, in the case of a corporation).

(d) *Issuance of license.* The license will be issued by the district director in letter form without cost to the licensee.

(e) *Previous license holders.* Any person who has been issued a license under the corresponding provision of the Internal Revenue Code of 1939, or any prior revenue law, is not required to renew such license under this section.

(f) *Returns of information as to foreign items.* For provisions relating to the filing of returns as to foreign items, see section 6041(b) and § 1.6041–4 of this chapter (Income Tax Regulations).

REGISTRATION

§ 301.7011 Statutory provisions; registration—persons paying a special tax.

SEC. 7011. *Registration—persons paying a special tax*—(a) *Requirement.* Every person engaged in any trade or business on which a special tax is imposed by law shall register with the Secretary or his delegate his name or style, place of residence, trade or business, and the place where such trade or business is to be carried on. In case of a firm or company, the names of the several persons constituting the same, and the places of residence, shall be so registered.

(b) *Registration in case of death or change of location.* Any person exempted under the provisions of section 4905 from the payment of a special tax, shall register with the Secretary or his delegate in accordance with regulations prescribed by the Secretary or his delegate.

§ 301.7011–1 Registration of persons paying a special tax.

(a) *Persons required to register.* Every person engaged in a trade or business in respect of which a special tax is imposed by one of the following sections of the Code is required to register with the district director for the district in which such trade or business is located:

(1) Section 4461 (relating to special tax on persons who maintain for use or permit the use of coin-operated amusement or gaming devices);

(2) Section 4471 (relating to special tax on persons who operate a bowling alley, billiard room, or poolroom);

(3) Section 4821 (relating to special tax on manufacturers, wholesale dealers, and retail dealers of adulterated butter and manufacturers of process or renovated butter);

(4) Section 4841 (relating to special tax on manufacturers, wholesale dealers, and retail dealers of filled cheese);

(5) Section 5081 (relating to special tax on rectifiers of distilled spirits or wines);

(6) Section 5091 (relating to special tax on brewers);

(7) Section 5101 (relating to special tax on manufacturers of stills);

(8) Section 5111 (relating to special tax on wholesale dealers in liquors and wholesale dealers in beer); or

(9) Section 5121 (relating to special tax on retail dealers in liquors and retail dealers in beer).

For provisions with respect to the registration of persons subject to the special tax imposed by section 5131, relating to the tax on persons claiming drawback on distilled spirits used in the manufacture of certain nonbeverage products, see section 5132 and Part 197 of this chapter (Regulations on Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products). For cross references to provisions requiring registration of persons engaged in a trade or business in respect of which a special tax is imposed by other sections of the Code, see § 301.7012.

(b) *Procedure for registration.* The registration required of a person by reason of his being engaged in a trade or business in respect of which one of the special taxes listed in paragraph (a) (1) to (9), inclusive, of this section is imposed shall be accomplished by executing and filing, in accordance with the instructions relating thereto, Special Tax Return Form 11 or Special Tax Return Form 11–B, whichever is applicable. Special Tax Return Form 11–B is used to report the special tax imposed by a section listed in paragraph (a) (1) or (2) of this section, and Special Tax Return Form 11 is used to report the special tax imposed by a section listed in paragraph (a) (3), (4), (5), (6), (7), (8), or (9) of this section.

(c) *Registration in case of change of ownership or location.* Any change of ownership or location of a trade or business in respect of which a special tax is imposed by a section listed in paragraph (a) (1), (2), (3), or (4) of this section must be registered with the Internal Revenue Service if, pursuant to section 4905 (relating to liability for special tax in case of death or change of location), such trade or business may be continued without the payment of any additional special tax. For requirements and procedures with respect to such registration, see section 4905 and the regulations thereunder in Part 45 of this chapter (Miscellaneous Stamp Tax Regulations).

§ 301.7012 Statutory provisions; cross references.

SEC. 7012. *Cross references*—(a) *Narcotic drugs.* For provisions relating to registration in relation to narcotic drugs, see section 4722.

(b) *Marihuana.* For provisions relating to registration in relation to marihuana, see section 4753.

(c) *Firearms.* For provisions relating to registration in connection with firearms, see sections 5802, 5841, and 5854.

(d) For provisions relating to registration in relation to the manufacture of playing cards, see section 4455.

(e) For provisions relating to registration in relation to the manufacture of white phosphorus matches, see section 4804(d).

(f) For special rules with respect to registration by persons engaged in receiving wagers, see section 4412.

(g) For provisions relating to registration in relation to the production or importation of gasoline, see section 4101.

(h) For provisions relating to registration in relation to the manufacture or production of lubricating oils, see section 4101.

(i) *Penalty.* (1) For penalty for failure to register, see section 7272.

(2) For other penalties for failure to register with respect to wagering, see section 7262.

[Sec. 7012 as amended by sec. 4(b)(7), Tax Rate Extension Act 1958 (72 Stat. 260)]

Bonds

§ 301.7101 Statutory provisions; form of bonds.

SEC. 7101. *Form of bonds.* Whenever, pursuant to the provisions of this title (other than sections 7485 and 6803(a)(1)), or rules or regulations prescribed under authority of this title, a person is required to furnish a bond or security—

(1) *General rule.* Such bond or security shall be in such form and with such surety or sureties as may be prescribed by regulations issued by the Secretary or his delegate.

(2) *United States bonds and notes in lieu of surety bonds.* The person required to furnish such bond or security may, in lieu thereof, deposit bonds or notes of the United States as provided in 6 U.S.C. 15.

§ 301.7101–1 Form of bond and surety required.

(a) *In general.* Any person required to furnish a bond under the provisions of the Code (other than section 6803(a)(1), relating to bonds required of certain postmasters, and section 7485, relating to bond to stay assessment and collection of a deficiency pending review of a Tax Court decision), or under any rules or regulations prescribed under the Code, shall (except as provided in paragraph (d) of this section) execute such bond—

(1) On the appropriate form prescribed by the Internal Revenue Service (which may be obtained from the district director), and

(2) With satisfactory surety.

For provisions as to what will be considered "satisfactory surety", see paragraph (b) of this section. The bonds referred to in this paragraph shall be drawn in favor of the United States.

(b) *Satisfactory surety*—(1) *Approved surety company or bonds or notes of the United States.* For purposes of paragraph (a) of this section, a bond shall be considered executed with satisfactory surety if:

(i) It is executed by a surety company holding a certificate of authority from the Secretary as an acceptable surety on Federal bonds; or

(ii) It is secured by bonds or notes of the United States as provided in 6 U.S.C. 15 (see 31 CFR Part 225).

(2) *Other surety acceptable in discretion of district director.* Unless otherwise expressly provided in the Code, or the regulations thereunder, a bond may, in the discretion of the district director, be considered executed with satisfactory surety if, in lieu of being executed or secured as provided in subparagraph (1) of this paragraph, it is:

(i) Executed by a corporate surety (other than a surety company) provided such corporate surety establishes that it is within its corporate powers to act as surety for another corporation or an individual;

(ii) Executed by two or more individual sureties, provided such individual sureties meet the conditions contained in subparagraph (3) of this paragraph;

(iii) Secured by a mortgage on real or personal property;

(iv) Secured by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any State, Territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order;

(v) Secured by corporate bonds or stocks, or by bonds issued by a State or political subdivision thereof, of recognized stability; or

(vi) Secured by any other acceptable collateral. Collateral shall be deposited with the district director or, in his discretion, with a responsible financial institution acting as escrow agent.

(3) *Conditions to be met by individual sureties.* If a bond is executed by two or more individual sureties, the following conditions must be met by each such individual surety:

(i) He must reside within the State in which the principal place of business or legal residence of the primary obligor is located;

(ii) He must have property subject to execution of a current market value, above all encumbrances, equal to at least the penalty of the bond;

(iii) All real property which he offers as security must be located in the State in which the principal place of business or legal residence of the primary obligor is located;

(iv) He must agree not to mortgage, or otherwise encumber, any property offered as security while the bond continues in effect, without first securing the permission of the district director; and

(v) He must file with the bond, and annually thereafter so long as the bond continues in effect, an affidavit as to the adequacy of his security, executed on the appropriate form furnished by the district director.

Partners may not act as sureties upon bonds of their partnership. Stockholders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their holdings of the stock of the corporation.

(4) *Adequacy of surety.* No surety or security shall be accepted if it does not adequately protect the interest of the United States.

(c) *Bonds required by Internal Revenue Code of 1939.* This section shall also apply in the case of bonds required under the Internal Revenue Code of 1939 (other than sections 1423(b) and 1145) or under the regulations under such Code.

(d) *Bonds required under subtitle E and chapter 75 of the Internal Revenue Code of 1954.* Bonds required under subtitle E and chapter 75, subtitle F, of the Internal Revenue Code of 1954 (or under the corresponding provisions of the Internal Revenue Code of 1939) shall be in such form and with such surety or sureties as are prescribed in the regulations in Subchapter E of this chapter (Alcohol, Tobacco, and Other Exercise Taxes).

§ 301.7102 Statutory provisions; single bond in lieu of multiple bonds.

SEC. 7102. *Single bond in lieu of multiple bonds.* In any case in which two or more bonds are required or authorized, the Secretary or his delegate may provide for the acceptance of a single bond complying with the requirements for which the several bonds are required or authorized.

§ 301.7102–1 Single bond in lieu of multiple bonds.

(a) *In general.* Except as provided in paragraph (b) of this section, a person who is required, or authorized, under the Code (other than sections 6803(a)(1) and 7485), or under any rules or regulations under the Code, to execute two or more bonds may, in the discretion of the district director, furnish a single bond in lieu of such two or more bonds but only if such single bond meets all the conditions and requirements prescribed for each of the separate bonds which it replaces. This section shall also apply in the case of bonds required or authorized under the Internal Revenue Code of 1939 (other than sections 1423(b) and 1145) or under the regulations under such Code.

(b) *Bonds required under subtitle E and chapter 75 of the Internal Revenue Code of 1954.* In the case of bonds required under subtitle E and chapter 75, subtitle F, of the Internal Revenue Code of 1954 (or under the corresponding provisions of the Internal Revenue Code of 1939), a single bond will not be accepted in lieu of two or more bonds except as provided in the regulations in Subchapter E of this chapter (Alcohol, Tobacco, and Other Excise Taxes).

§ 301.7103 Statutory provisions; cross references—other provisions for bonds.

SEC. 7103. *Cross references—other provisions for bonds*—(a) *Extensions of time.* (1) For bond where time to pay tax or deficiency has been extended, see section 6165.

(2) For bond to stay collection of a jeopardy assessment, see section 6863.

(3) For bond to stay assessment and collection prior to review of a Tax Court decision, see section 7485.

(4) For furnishing of bond where taxable year is closed by the Secretary or his delegate, see section 6851(e).

(5) For bond in case of an election to postpone payment of estate tax where the value of a reversionary or remainder interest is included in the gross estate, see section 6165.

(b) *Release of lien or seized property.* (1) For the release of the lien provided for in section 6325 by furnishing the Secretary or his delegate a bond, see section 6325(a)(2).

(2) For bond to obtain release of perishable goods which have been seized under forfeiture proceeding, see section 7324(3).

(3) For bond to release perishable goods under levy, see section 6336.

(4) For bond executed by claimant of seized goods valued at $1,000 or less, see section 7325(3).

(c) *Miscellaneous.* (1) For bond as a condition precedent to the allowance of the credit for accrued foreign taxes, see section 905(c).

(2) For bonds relating to alcohol and tobacco taxes, see generally subtitle E.

(d) *Bonds required with respect to certain products.* (1) For bond in case of articles taxable under subchapter B of chapter 37 processed for exportation without payment of the tax provided therein, see section 4513(c).

(2) For bond in case of oleomargarine removed from the place of manufacture for exportation to a foreign country, see section 4593(b).

(3) For requirement of bonds with respect to certain industries see—

(A) Section 4596 relating to a manufacturer of oleomargarine;

(B) Section 4814(c) relating to a manufacturer of process or renovated butter or adulterated butter;

(C) Section 4833(c) relating to a manufacturer of filled cheese;

(D) Section 4713(b) relating to a manufacturer of opium suitable for smoking purposes;

(E) Section 4804(c) relating to a manufacturer of white phosphorus matches;

(F) Section 4101 relating to a producer or importer of gasoline or a manufacturer or producer of lubricating oils subject to tax under chapter 32.

(e) *Personnel bonds.* (1) For bonds of internal revenue personnel to insure faithful performance of duties, see section 7803(c).

(2) For jurisdiction of United States district courts, concurrently with the courts of the several States, in an action on the official bond of any internal revenue officer or employee, see section 7402(d).

(3) For bonds of postmasters to whom stamps have been furnished under section 6802(1), see section 6803(a)(1).

(4) For bonds in cases coming within the provisions of section 6802 (2) or (3), relating to stamps furnished a designated depositary of the United States or State agent, see section 6803(b)(1).

Closing Agreements and Compromises

§ 301.7121 Statutory provisions; closing agreements.

SEC. 7121. *Closing agreements*—(a) *Authorization.* The Secretary or his delegate is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period.

(b) *Finality.* If such agreement is approved by the Secretary or his delegate (within such time as may be stated in such agreement, or later agreed to) such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

§ 301.7121–1 Closing agreements.

(a) *In general.* The Commissioner may enter into a written agreement with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period ending prior or subsequent to the date of such agreement. A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner that the United States will sustain no disadvantage through consummation of such an agreement.

(b) *Scope of closing agreement*—(1) *In general.* A closing agreement may be executed even though under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of closing agreements relating to the tax liability for a single period.

(2) *Taxable periods ended prior to date of closing agreement.* Closing agreements with respect to taxable periods ended prior to the date of the agreement may relate to the total tax liability of the taxpayer or to one or more separate items affecting the tax liability of the taxpayer, as, for example, the amount of gross income, deduction for losses, depreciation, depletion, the year in which an item of income is to be included in gross income, the year in which an item of loss is to be deducted, or the value of property on a specific date. A closing agreement may also be entered into for the purpose of allowing a deficiency dividend deduction under

section 547. In addition, a closing agreement constitutes a determination as defined by section 1313.

(3) *Taxable periods ending subsequent to date of closing agreement.* Closing agreements with respect to taxable periods ending subsequent to the date of the agreement may relate to one or more separate items affecting the tax liability of the taxpayer.

(4) *Illustration.* The provisions of this paragraph may be illustrated by the following example:

Example. A owns 500 shares of stock in the XYZ Corporation which he purchased prior to March 1, 1913. A is considering selling 200 shares of such stock but is uncertain as to the basis of the stock for the purpose of computing gain. Either prior or subsequent to the sale, a closing agreement may be entered into determining the market value of such stock as of March 1, 1913, which represents the basis for determining gain if it exceeds the adjusted basis otherwise determined as of such date. Not only may the closing agreement determine the basis for computing gain on the sale of the 200 shares of stock, but such an agreement may also determine the basis (unless or until the law is changed to require the use of some other factor to determine basis) of the remaining 300 shares of stock upon which gain will be computed in a subsequent sale.

(c) *Finality.* A closing agreement which is approved within such time as may be stated in such agreement, or later agreed to, shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

However, a closing agreement with respect to a taxable period ending subsequent to the date of the agreement is subject to any change in, or modification of, the law enacted subsequent to the date of the agreement and made applicable to such taxable period, and each closing agreement shall so recite.

(d) *Procedure with respect to closing agreements*—(1) *Submission of request.* A request for a closing agreement which relates to a prior taxable period may be submitted at any time before a case with respect to the tax liability involved is docketed in the Tax Court of the United States. All closing agreements shall be executed on forms prescribed by the Internal Revenue Service. The procedure with respect to requests for closing agreements shall be under such rules as may be prescribed from time to time by the Commissioner in accordance with the regulations under this section.

(2) *Collection, credit, or refund.* Any tax or deficiency in tax determined pursuant to a closing agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded, in accordance with the applicable provisions of law.

§ 301.7122 Statutory provisions; compromises.

SEC. 7122. *Compromises*—(a) *Authorization.* The Secretary or his delegate may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General or his delegate may compromise any such case after reference to the Department of Justice for prosecution or defense.

(b) *Record.* Whenever a compromise is made by the Secretary or his delegate in any case, there shall be placed on file in the office of the Secretary or his delegate the opinion of the General Counsel for the Department of the Treasury or his delegate, with his reasons therefor, with a statement of:

(1) The amount of tax assessed,

(2) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise.

Notwithstanding the foregoing provisions of this subsection, no such opinion shall be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than $500.

§ 301.7122–1 Compromises.

(a) *In general.* Except with respect to certain criminal liabilities arising under the internal revenue laws relating to narcotics, smoking opium, and marihuana, the Commissioner may compromise any civil or criminal liability arising under the internal revenue laws prior to reference of a case involving such liability to the Department of Justice for prosecution or defense. Any such liability may be compromised only upon one or both of the following two grounds:

(1) Doubt as to liability; or

(2) Doubt as to collectibility.

No such liability will be compromised if the liability has been established by a valid judgment or is certain, and there is no doubt as to the ability of the Government to collect the amounts owing with respect to such liability.

(b) *Scope of compromise agreement.* A compromise agreement may relate to a civil or criminal liability for taxes, interest, ad valorem penalties, or specific penalties. However, a criminal liability may be compromised only if it involves a violation of a regulatory provision of the Code, or a related statute, and then only if such violation was not deliberately committed with an intent to defraud.

(c) *Effect of compromise agreement.* A compromise agreement relates to the entire liability of the taxpayer (including taxes, ad valorem penalties, and interest) with respect to which the offer in compromise is submitted and all questions of such liability are conclusively settled thereby. Specific penalties, however, shall be compromised separately and not in connection with taxes, interest, or ad valorem penalties. Neither the taxpayer nor the Government shall, upon acceptance of an offer in compromise, be permitted to reopen the case except by reason of (1) falsification or concealment of assets by the taxpayer, or (2) mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside. However, acceptance of an offer in compromise of a civil liability does not remit a criminal liability, nor does acceptance of an offer in compromise of a criminal liability remit a civil liability.

(d) *Procedure with respect to offers in compromise*—(1) *Submission of offers.* Offers in compromise shall be submitted on forms prescribed by the Internal Revenue Service which may be obtained from district directors of internal revenue, and should generally be accompanied by a remittance representing the amount of the compromise offer or a deposit if the offer provides for future installment payments. If the final payment on an accepted offer is contingent upon the immediate or simultaneous release of a tax lien in whole or in part, such payment must be in cash, or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any State, Territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order.

(2) *Stay of collection.* The submission of an offer in compromise shall not automatically operate to stay the collection of any tax liability. However, enforcement of collection may be deferred if the interests of the United States shall not be jeopardized thereby.

(3) *Acceptance.* An offer in compromise shall be considered accepted only when the proponent thereof is so notified in writing. As a condition to accepting an offer in compromise, the taxpayer may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interests of the United States.

(4) *Withdrawal or rejection.* An offer in compromise may be withdrawn by the proponent at any time prior to its acceptance. In the event an offer is rejected, the proponent shall be promptly notified in writing. Frivolous offers or offers submitted for the purpose of delaying the collection of tax liabilities shall be immediately rejected. If an offer in compromise is withdrawn or rejected, the amount tendered with the offer, including all installments paid, shall be refunded without interest, unless the taxpayer has stated or agreed that the amount tendered may be applied to the liability with respect to which the offer was submitted.

(e) *Record.* Except as otherwise provided in this paragraph, if an offer in compromise is accepted, there shall be placed on file the opinion of the Chief Counsel for the Internal Revenue Service with respect to such compromise, with his reasons therefor, and including a statement of—

(1) The amount of tax assessed,

(2) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise.

However, no such opinion shall be required with respect to the compromise

of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than $500.

(f) *Requirement with respect to statute of limitations.* No offer in compromise shall be accepted unless the taxpayer waives the running of the statutory period of limitations on both or either assessment or collection of the tax liability involved for the period during which the offer is pending, or the period during which any installment remains unpaid, and for one year thereafter.

(g) *Inspection with respect to accepted offers in compromise.* For provisions relating to the inspection of returns and accepted offers in compromise, see section 6103(a) and the regulations thereunder contained in this part.

§ 301.7123 Statutory provisions; cross references.

SEC. 7123. *Cross references*—(a) *Criminal penalties.* For criminal penalties for concealment of property, false statement, or falsifying and destroying records, in connection with any closing agreement, compromise, or offer of compromise, see section 7206.

(b) *Compromises after judgment.* For compromises after judgment, see R.S. 3469 (31 U.S.C. 194).

Crimes, Other Offenses, and Forfeitures

CRIMES

GENERAL PROVISIONS

§ 301.7201 Statutory provisions; attempt to evade or defeat tax.

SEC. 7201. *Attempt to evade or defeat tax.* Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

§ 301.7202 Statutory provisions; willful failure to collect or pay over tax.

SEC. 7202. *Willful failure to collect or pay over tax.* Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

§ 301.7203 Statutory provisions; willful failure to file return, supply information, or pay tax.

SEC. 7203. *Willful failure to file return, supply information, or pay tax.* Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

§ 301.7204 Statutory provisions; fraudulent statement or failure to make statement to employees.

SEC. 7204. *Fraudulent statement or failure to make statement to employees.* In lieu of any other penalty provided by law (except the penalty provided by section 6674) any person required under the provisions of section 6051 to furnish a statement who willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall, for each such offense, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

§ 301.7205 Statutory provisions; fraudulent withholding exemption certificate or failure to supply information.

SEC. 7205. *Fraudulent withholding exemption certificate or failure to supply information.* Any individual required to supply information to his employer under section 3402(f) who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in lieu of any penalty otherwise provided, upon conviction thereof, be fined not more than $500, or imprisoned not more than 1 year, or both.

§ 301.7206 Statutory provisions; fraud and false statements.

SEC. 7206. *Fraud and false statements.* Any person who—

(1) *Declaration under penalties of perjury.* Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

(2) *Aid or assistance.* Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

(3) *Fraudulent bonds, permits, and entries.* Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof; or

(4) *Removal or concealment with intent to defraud.* Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title; or

(5) *Compromises and closing agreements.* In connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully—

(A) *Concealment of property.* Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

(B) *Withholding, falsifying, and destroying records.* Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both, together with the costs of prosecution.

§ 301.7207 Statutory provisions; fraudulent returns, statements, or other documents.

SEC. 7207. *Fraudulent returns, statements, or other documents.* Any person who willfully delivers or discloses to the Secretary or his delegate any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

§ 301.7207–1 Fraudulent returns, statements, or other documents.

Any person who willfully delivers or discloses to any officer or employe of the Internal Revenue Service any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

§ 301.7208 Statutory provisions; offenses relating to stamps.

SEC. 7208. *Offenses relating to stamps.* Any person who—

(1) *Counterfeiting.* With intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed under authority of this title for the collection or payment of any tax imposed by this title, or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device; or

(2) *Mutilation or removal.* Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title; or

(3) *Use of mutilated, insufficient, or counterfeited stamps.* Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title,

(A) Any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title; or

(B) Any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or

(C) Any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article; or

(4) *Reuse of stamps*—(A) *Preparation for reuse.* Willfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to

use, or cause the same to be used, after it has already been used; or

(B) *Trafficking.* Knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

(C) *Possession.* Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article; or

(5) *Emptied stamped packages.* Commits the offense described in section 7271 (relating to disposal and receipt of stamped packages) with intent to defraud the revenue, or to defraud any person;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

§ 301.7209 Statutory provisions; unauthorized use or sale of stamps.

SEC. 7209. *Unauthorized use or sale of stamps.* Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this title or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Secretary or his delegate under this title for the collection or payment of any tax imposed by this title, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 6 months, or both.

§ 301.7209–1 Unauthorized use or sale of stamps.

(a) Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in the Code or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Commissioner under the Code for the collection or payment of any tax imposed by the Code, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 6 months, or both.

(b) For use or resale of unused documentary stamps, see paragraph (c) of § 43.6802–1 of this chapter (Documentary Stamp Tax Regulations).

§ 301.7210 Statutory provisions; failure to obey summons.

SEC. 7210. *Failure to obey summons.* Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda, or other papers, as required under sections 6420 (e)(2), 6421(f)(2), 7602, 7603, and 7604(b), neglects to appear or to produce such books, accounts, records, memoranda, or other papers, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution.

[Sec. 7210 as amended by sec. 4(h), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 91); sec. 208(d)(3), Highway Revenue Act 1956 (70 Stat. 396)]

§ 301.7211 Statutory provisions; false statements to purchasers or lessees relating to tax.

SEC. 7211. *False statements to purchasers or lessees relating to tax.* Whoever in connection with the sale or lease, or offering for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral—

(1) Intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or

(2) Ascribing a particular part of such price to a tax imposed under the authority of the United States,

knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than 1 year, or both.

§ 301.7212 Statutory provisions; attempts to interfere with administration of internal revenue laws.

SEC. 7212. *Attempts to interfere with administration of internal revenue laws*—(a) *Corrupt or forcible interference.* Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined not more than $5,000, or imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than $3,000, or imprisoned not more than 1 year, or both. The term "threats of force", as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family.

(b) *Forcible rescue of seized property.* Any person who forcibly rescues or causes to be rescued any property after it shall have been seized under this title, or shall attempt or endeavor so to do, shall, excepting in cases otherwise provided for, for every such offense, be fined not more than $500, or not more than double the value of the property so rescued, whichever is the greater, or be imprisoned not more than 2 years.

§ 301.7213 Statutory provisions; unauthorized disclosure of information.

SEC. 7213. *Unauthorized disclosure of information*—(a) *Income returns*—(1) *Federal employees and other persons.* It shall be unlawful for any officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any person committing an offense against the foregoing provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment.

(2) *State employees.* Any officer, employee, or agent of any State or political subdivision, who divulges (except as authorized in section 6103(b), or when called upon to testify in any judicial or administrative proceeding to which the State or political subdivision, or such State or local official, body, or commission, as such, is a party), or who makes known to any person in any manner whatever not provided by law, any information acquired by him through an inspection permitted him or another under section 6103(b), or who permits any income return or copy thereof or any book containing any abstract or particulars thereof, or any other information, acquired by him through an inspection permitted him or another under section 6103(b), to be seen or examined by any person except as provided by law, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(3) *Shareholders.* Any shareholder who pursuant to the provisions of section 6103(c) is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

(b) *Disclosure of operations of manufacturer or producer.* Any officer or employee of the United States who divulges or makes known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution; and the offender shall be dismissed from office or discharged from employment.

(c) *Offenses relating to reproduction of documents.* Any person who uses any film or photoimpression, or reproduction therefrom, or who discloses any information contained in any such film, photoimpression, or reproduction, in violation of any provision of the regulations prescribed pursuant to section 7513(b), shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(d) *Cross references*—(1) *Returns of Federal unemployment tax.* For special provisions applicable to returns of tax under chapter 23 (relating to Federal Unemployment Tax), see section 6106.

(2) *Penalties for disclosure of confidential information.* For penalties for disclosure of confidential information by any officer or employee of the United States or any department or agency thereof, see 18 U.S.C. 1905.

[Sec. 7213 as amended by sec. 90(c), Technical Amendments Act 1958 (72 Stat. 1666)]

§ 301.7214 Statutory provisions; offenses by officers and employees of the United States.

SEC. 7214. *Offenses by officers and employees of the United States*—(a) *Unlawful acts of revenue officers or agents.* Any officer or employee of the United States acting in connection with any revenue law of the United States—

(1) Who is guilty of any extortion or willful oppression under color of law; or

(2) Who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or

(3) Who with intent to defeat the application of any provision of this title fails to perform any of the duties of his office or employment; or

(4) Who conspires or colludes with any other person to defraud the United States; or

(5) Who knowingly makes opportunity for any person to defraud the United States; or

(6) Who does or omits to do any act with intent to enable any other person to defraud the United States; or

(7) Who makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate, return, or statement; or

(8) Who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to the Secretary or his delegate; or

(9) Who demands, or accepts, or attempts to collect, directly or indirectly as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do;

shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both. The court may in its discretion award out of the fine so imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution.

(b) *Interest of internal revenue officer or employee in tobacco or liquor production.* Any internal revenue officer or employee interested, directly or indirectly, in the manufacture of tobacco, snuff, or cigarettes, or in the production, rectification, or redistillation of distilled spirits, shall be dismissed from office; and each such officer or employee so interested in any such manufacture or production, rectification, or redistillation or production of fermented liquors shall be fined not more than $5,000.

(c) *Cross reference.* For penalty on collecting or disbursing officers trading in public funds or debts or property, see 18 U.S.C. 1901.

[Sec. 7214 as amended by sec. 204(5), Excise Tax Technical Changes Act 1958 (72 Stat. 1429)]

§ 301.7214–1 Offenses by officers and employees of the United States.

Any officer or employee of the United States acting in connection with any revenue law of the United States required to make a written report under the provisions of section 7214(a)(8) shall submit such report to the Commissioner, or to a regional commissioner or district director.

§ 301.7215 Statutory provisions; offenses with respect to collected taxes.

SEC. 7215. *Offenses with respect to collected taxes*—(a) *Penalty.* Any person who fails to comply with any provision of section 7512(b) shall, in addition to any other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than one year, or both, together with the costs of prosecution.

(b) *Exceptions.* This section shall not apply—

(1) To any person, if such person shows that there was reasonable doubt as to (A) whether the law required collection of tax, or (B) who was required by law to collect tax, and

(2) To any person, if such person shows that the failure to comply with the provisions of section 7512(b) was due to circumstances beyond his control.

For purposes of paragraph (2), a lack of funds existing immediately after the payment of wages (whether or not created by the payment of such wages) shall not be considered to be circumstances beyond the control of a person.

[Sec. 7215 as added by sec. 2, Act of Feb. 11, 1958 (Pub. Law 85–321, 72 Stat. 6)]

PENALTIES APPLICABLE TO CERTAIN TAXES

§ 301.7231 Statutory provisions; failure to obtain license for collection of foreign items.

SEC. 7231. *Failure to obtain license for collection of foreign items.* Any person required by section 7001 (relating to collection of certain foreign items) to obtain a license who knowingly undertakes to collect the payments described in section 7001 without having obtained a license therefor, or without complying with regulations prescribed under section 7001, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 1 year, or both.

§ 301.7231–1 Failure to obtain license for collection of foreign items.

For provisions relating to the obtaining of a license for the collection of foreign items, see section 7001 and § 301.7001–1.

§ 301.7232 Statutory provisions; failure to register or give bond, or false statement by manufacturer or producer of gasoline or lubricating oil.

SEC. 7232. *Failure to register or give bond, or false statement by manufacturer or producer of gasoline or lubricating oil.* Every person who fails to register or give bond as required by section 4101, or who in connection with any purchase of gasoline or lubricating oil falsely represents himself to be registered and bonded as provided by section 4101, or who willfully makes any false statement in an application for registration under section 4101, shall, upon conviction thereof, be fined not more than $5,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

§ 301.7232–1 Failure to register or give bond, or false statement by manufacturer or producer of gasoline or lubricating oil.

For provisions relating to registration and bonding of persons subject to tax on the sale of gasoline or lubricating oil, see section 4101 and § 48.4101–1 of this chapter (Manufacturers and Retailers Excise Tax Regulations).

§ 301.7233 Statutory provisions; failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations.

SEC. 7233. *Failure to pay, or attempt to evade payment of, tax on cotton futures, and other violations.* Any person—

(1) *Nonpayment or evasion of tax.* Liable to the payment of any tax imposed by subchapter D of chapter 39, who fails to pay, or evades, or attempts to evade the payment of such tax; and

(2) *Other violations.* Who otherwise violates any provision of subchapter D of chapter 39, or any rule or regulation made in pursuance thereof;

shall, upon conviction thereof, be fined not less than $100 nor more than $20,000, in the discretion of the court; and, in case of natural persons, may, in addition, be punished by imprisonment for not less than 60 days nor more than 3 years, in the discretion of the court.

§ 301.7234 Statutory provisions; violation of laws relating to oleomargarine or adulterated butter operations.

SEC. 7234. *Violation of laws relating to oleomargarine or adulterated butter operations*—(a) *False branding, selling, or packing, in violation of law.* Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any oleomargarine in any other form than in new wooden, tinplate, or paper packages, as described in section 4594 (a) and (b), or who packs in any package any oleomargarine in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law shall be fined for each offense not more than $1,000, and be imprisoned not more than 2 years.

(b) *Removal or defacement of stamps, marks, or brands.* Any person who shall willfully remove or deface the stamps, marks, or brands on a package containing oleomargarine or adulterated butter, taxed as provided by subchapter F of chapter 38, or subchapter C of chapter 39, respectively, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than $100 nor more than $2,000, and by imprisonment for not less than 30 days nor more than 6 months.

(c) *Failure of wholesale dealers to keep or permit inspection of books, or to render returns.* Any person who willfully violates any of the provisions of section 4597(a) shall for each such offense be fined not less than $50 and not exceeding $500, and imprisoned not less than 30 days nor more than 6 months.

(d) *Imported oleomargarine or adulterated butter*—(1) *Failure of customs officer to comply with law.* Every officer or employee of the Treasury Department having duties under section 4591 who permits any imported oleomargarine or adulterated butter to pass out of his custody or control without compliance by the owner or importer thereof with the provisions of section 4591 relating thereto, shall be fined not less than $1,000 nor more than $5,000, and imprisoned not less than 6 months nor more than 3 years.

(2) *Empty packages*—(A) *Failure to destroy stamps.* Any person who willfully neglects or refuses to destroy utterly the stamps on any empty package which contained oleomargarine or adulterated butter, or filled cheese shall for each such offense be fined not exceeding $50, and imprisoned not less than 10 days nor more than 6 months; and

(B) *Trafficking.* Any person who fraudulently gives away or accepts from another, or who sells, buys, or uses for packing oleomargarine or adulterated butter, any such stamped package shall for each such offense be fined not exceeding $100, and be imprisoned not more than 1 year.

(3) *Sale when improperly packed or stamped.* Every person who sells or offers for sale any imported oleomargarine or adulterated butter, or oleomargarine or adulterated butter purporting or claimed to have been imported, not put up in packages and stamped as provided by subchapter F of chapter 38 or subchapter C of chapter 39, shall be fined not less than $500 nor more than $5,000, and be imprisoned not less than 6 months nor more than 2 years.

(4) *Fraud by importer.* Whenever any person importing oleomargarine defrauds, or attempts to defraud, the United States of the tax on the oleomargarine imported by him, or any part thereof, he shall be fined not less than $500 nor more than $5,000, and shall be imprisoned not less than 6 months nor more than 3 years.

§ 301.7235 Statutory provisions; violation of laws relating to adulterated butter and process or renovated butter.

SEC. 7235. *Violation of laws relating to adulterated butter and process or renovated butter*—(a) *Adulterated butter—False branding, sale, packing, or stamping in violation of law.* Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any adulterated butter in any other form than in new wooden, tin-plate, or paper packages as described in section 4815(a), or who packs in any package any adulterated butter in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for each offense not more than $1,000, and be imprisoned not more than 2 years.

(b) *Failure of wholesale dealers to keep or permit inspection of books, or to render returns.* Any person who willfully violates any of the provisions of section 4815(b) shall for each such offense be fined not less than $50 and not exceeding $500, and imprisoned not less than 30 days nor more than 6 months.

(c) *Failure to comply with provisions relating to the manufacture, storage, and marking of process or renovated butter.* Any person, firm, or corporation violating any of the provisions of section 4817 shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $1,000, or by imprisonment for not more than 6 months, or by both such fine and imprisonment, in the discretion of the court.

(d) *Dealers in adulterated butter.* Every person who carries on the business of a dealer in adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $50 nor more than $500 for each offense.

(e) *Fraud by manufacturer.* Whenever any person manufacturing adulterated butter defrauds, or attempts to defraud, the United States of the tax on the adulterated butter manufactured by him, or any part thereof, he shall be fined not less than $500 nor more than $5,000, and shall be imprisoned not less than 6 months nor more than 3 years.

§ 301.7236 Statutory provisions; violation of laws relating to filled cheese.

SEC. 7236. *Violation of laws relating to filled cheese—False branding, sale, packing, or stamping in violation of law.* Every person who knowingly sells or offers to sell, or delivers or offers to deliver, filled cheese in any other form than in new wooden or paper packages, marked and branded as provided for and described in section 4834(b), or who packs in any package or packages filled cheese in any manner contrary to law, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall upon conviction thereof be fined for each and every offense not less than $50 and not more than $500, or be imprisoned not less than 30 days nor more than 1 year.

§ 301.7237 Statutory provisions; violation of laws relating to narcotic drugs and to marihuana.

SEC. 7237. *Violation of laws relating to narcotic drugs and to marihuana*—(a) *Where no specific penalty is otherwise provided.* Whoever commits an offense, or conspires to commit an offense, described in part I or part II of subchapter A of chapter 39 for which no specific penalty is otherwise provided, shall be imprisoned not less than 2 or more than 10 years and, in addition, may be fined not more than $20,000. For a second offense, the offender shall be imprisoned not less than 5 or more than 20 years and, in addition, may be fined not more than $20,000. For a third or subsequent offense, the offender shall be imprisoned not less than 10 or more than 40 years and, in addition, may be fined not more than $20,000.

(b) *Sale or other transfer without written order.* Whoever commits an offense, or conspires to commit an offense, described in section 4705(a) or section 4742(a) shall be imprisoned not less than 5 or more than 20 years and, in addition, may be fined not more than $20,000. For a second or subsequent offense, the offender shall be imprisoned not less than 10 or more than 40 years and, in addition, may be fined not more than $20,000. If the offender attained the age of 18 before the offense and—

(1) The offense consisted of the sale, barter, exchange, giving away, or transfer of any narcotic drug or marihuana to a person who had not attained the age of 18 at the time of such offense, or

(2) The offense consisted of a conspiracy to commit an offense described in paragraph (1),

the offender shall be imprisoned not less than 10 or more than 40 years and, in addition, may be fined not more than $20,000.

(c) *Conviction of second or subsequent offenses*—(1) *Prior offenses counted.* For purposes of subsections (a), (b), and (d) of this section, subsections (c) and (h) of section 2 of the Narcotic Drugs Import and Export Act, as amended (21 U.S.C., sec. 174), and the Act of July 11, 1941, as amended (21 U.S.C., sec. 184a), an offender shall be considered a second or subsequent offender, as the case may be, if he previously has been convicted of any offense the penalty for which was provided in subsection (a) or (b) of this section or in—

(A) Subsection (c), (h), or (i) of section 2 of the Narcotic Drugs Import and Export Act (21 U.S.C., sec. 174);

(B) The Act of July 11, 1941 (21 U.S.C., sec. 184a);

(C) Section 9 of the Act of December 17, 1914 (38 Stat. 789);

(D) Section 1 of the Act of May 26, 1922 (42 Stat. 596);

(E) Section 12 of the Marihuana Tax Act of 1937 (50 Stat. 556); or

(F) Section 2557(b)(1) or 2596 of the Internal Revenue Code of 1939.

For purposes of determining prior offenses under the preceding sentence, a reference to any subsection, section, or Act providing a penalty for an offense shall be considered as a reference to such subsection, section, or Act as in effect (as originally enacted or as amended, as the case may be) with respect to the offense for which the offender previously has been convicted.

(2) *Procedure.* After conviction (but before pronouncement of sentence) of any offense the penalty for which is provided in subsection (a) or (b) of this section, subsection (c) or (h) of section 2 of the Narcotic Drugs Import and Export Act, as amended, or such Act of July 11, 1941, as amended, the court shall be advised by the United States attorney whether the conviction is the offender's first or a subsequent offense. If it is not a first offense, the United States attorney shall file an information setting forth the prior convictions. The offender shall have the opportunity in open court to affirm or deny that he is identical with the person previously convicted. If he denies the identity, sentence shall be postponed for such time as to permit a trial before a jury on the sole issue of the offender's identity with the person previously convicted. If the offender is found by the jury to be the person previously convicted, or if he acknowledges that he is such person, he shall be sentenced as prescribed in subsection (a) or (b) of this section, subsection (c) or (h) of such section 2, or such Act of July 11, 1941, as amended, as the case may be.

(d) *No suspension of sentence; no probation; etc.*—Upon conviction—

(1) Of any offense the penalty for which is provided in subsection (b) of this section, subsection (c), (h), or (i) of section 2 of the Narcotic Drugs Import and Export Act, as amended, or such Act of July 11, 1941, as amended, or

(2) Of any offense the penalty for which is provided in subsection (a) of this section, if it is the offender's second or subsequent offense,

the imposition or execution of sentence shall not be suspended, probation shall not be granted, section 4202 of title 18 of the United States Code shall not apply, and the Act of July 15, 1932 (47 Stat. 696; D.C. Code 24–201 and following), as amended, shall not apply.

(e) *Unlawful disclosure of information on returns and order forms.* Any person who shall disclose the information contained in the statements or returns required under section 4732(b) or 4754(a), in the duplicate order forms required under section 4705(e), or in the order forms or copies thereof referred to in section 4742(d), except—

(1) As expressly provided in section 4773,

(2) For the purpose of enforcing any law of the United States relating to narcotic drugs or marihuana, or

(3) For the purpose of enforcing any law of any State or Territory or the District of Columbia, or any insular possession of the United States, or ordinance of any organized municipality therein, regulating the sale, prescribing, dispensing, dealing in, or distribution of narcotic drugs or marihuana,

shall be fined not more than $2,000 or imprisoned not more than 5 years or both.

[Sec. 7237 as amended by Act of Jan. 20, 1955 (Pub. Law 1, 84th Cong., 69 Stat. 3); sec. 103, Narcotic Control Act 1956 (70 Stat. 568)]

§ 301.7238 Statutory provisions; violation of laws relating to opium for smoking.

SEC. 7238. *Violation of laws relating to opium for smoking.* A penalty of not less than $10,000 or imprisonment for not less than 5 years, or both, in the discretion of the court, shall be imposed for each and every violation of subpart B of part I of subchapter A of chapter 39 (relating to opium for smoking) by any person or persons.

§ 301.7239 Statutory provisions; violations of laws relating to white phosphorus matches.

SEC. 7239. *Violations of laws relating to white phosphorus matches*—(a) *Selling unstamped matches.* Any manufacturer of matches who manufactures, sells, removes, distributes, or offers to sell or distribute, white phosphorus matches without there being affixed thereto an adhesive stamp, denoting the tax required by subchapter B of chapter 39 effectually canceled as provided by section 4804(a)(2), shall, for each offense, be guilty of a felony and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 2 years, or both.

(b) *Use of insufficient stamps.* Every person who affixes a stamp on any package of white phosphorus matches denoting a less amount of tax than that required by law shall, for each offense, be guilty of a felony and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 2 years, or both.

§ 301.7240 Statutory provisions; officials investing or speculating in sugar.

SEC. 7240. *Officials investing or speculating in sugar.* Any person, while acting in any official capacity in the administration of subchapter A of chapter 37, relating to man-

ufactured sugar, who invests or speculates in sugar or liquid sugar, contracts relating thereto, or the stock or membership interests of any association or corporation engaged in the production or manufacture of sugar or liquid sugar, shall be dismissed from office or discharged from employment and shall be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned not more than 2 years, or both.

OTHER OFFENSES

§ 301.7261 Statutory provisions; representation that retailers' excise tax is excluded from price of article.

SEC. 7261. *Representation that retailers' excise tax is excluded from price of article.* Whoever, in connection with the sale or lease, or offer for sale or lease, of any article taxable under chapter 31, makes any statement, written or oral, in advertisement or otherwise, intended or calculated to lead any person to believe that the price of the article does not include the tax imposed by chapter 31, shall on conviction thereof be fined not more than $1,000.

§ 301.7262 Statutory provisions; violation of occupational tax laws relating to wagering—failure to pay special tax.

SEC. 7262. *Violation of occupational tax laws relating to wagering—failure to pay special tax.* Any person who does any act which makes him liable for special tax under subchapter B of chapter 35 without having paid such tax, shall, besides being liable to the payment of the tax, be fined not less than $1,000 and not more than $5,000.

§ 301.7263 Statutory provisions; penalties relating to cotton futures.

SEC. 7263. *Penalties relating to cotton futures*—(a) *Withholding information.* Any person engaged in the business of dealing in cotton who shall, within a reasonable time prescribed by the Secretary of Agriculture or any agent acting under his instructions, willfully fail or refuse to answer questions or to produce books, letters, papers, or documents, as required under section 4862(b), or who shall willfully give any answer that is false or misleading, shall, upon conviction thereof, be fined not more than $500.

(b) *Civil penalties.* In addition to the criminal penalties provided by section 7233, there shall be imposed, on account of each violation of subchapter D of chapter 39, relating to cotton futures, a penalty of $2,000, to be recovered in a civil action founded on subchapter D of chapter 39 in the name of the United States as plaintiff, and when so recovered one-half of said amount shall be paid over to the person giving the information upon which such recovery was based. It shall be the duty of United States attorneys, to whom satisfactory evidence of violations of subchapter D of chapter 39 is furnished, to institute and prosecute actions for the recovery of the penalties prescribed by this subsection.

§ 301.7264 Statutory provisions; offenses relating to renovated or adulterated butter.

SEC. 7264. *Offenses relating to renovated or adulterated butter.* Every person who carries on the business of a manufacturer of process or renovated butter or adulterated butter without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $1,000 nor more than $5,000.

§ 301.7265 Statutory provisions; other offenses relating to oleomargarine or adulterated butter operations.

SEC. 7265. *Other offenses relating to oleomargarine or adulterated butter operations*—(a) *Omission or removal of label.* (1) Every manufacturer of oleomargarine who neglects to affix the label described in section 4594(c) to any package containing oleomargarine made by him, or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined $50 for each package in respect to which such offense is committed.

(2) Every manufacturer of adulterated butter who neglects to affix the label required under section 4814(a)(1) to any package containing adulterated butter made by him, or sold or offered for sale for or by him, and every person who removes any such label so affixed from any such package shall be fined $50 for each package in respect to which such offense is committed.

(b) *Purchasing when not properly branded or stamped.* Every person who knowingly purchases or receives for sale any oleomargarine or adulterated butter which has not been branded or stamped according to law shall be liable to a penalty of $50 for each such offense.

(c) *Other offenses.* If any manufacturer of oleomargarine or adulterated butter, any dealer therein or any importer or exporter thereof shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or shall do anything prohibited by subchapter F of chapter 38 or subchapter C of chapter 39, if there be no specific penalty or punishment imposed by any other provision of this chapter or chapter 68 for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the things required or prohibited, he shall pay a penalty of $1,000.

§ 301.7266 Statutory provisions; offenses relating to filled cheese.

SEC. 7266. *Offenses relating to filled cheese*—(a) *Failure to pay special tax.* Every person, firm, or corporation—

(1) *Manufacturers.* Who carries on the business of a manufacturer of filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $400 nor more than $3,000; and

(2) *Wholesale dealers.* Who carries on the business of a wholesale dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable to the payment of the tax, be fined not less than $250 nor more than $1,000; and

(3) *Retail dealers.* Who carries on the business of a retail dealer in filled cheese without having paid the special tax therefor, as required by law, shall, besides being liable for the payment of the tax, be fined not less than $40 nor more than $500 for each and every offense.

(b) *Other offenses.* Any manufacturer of filled cheese who fails to comply with the provisions of section 4833 (b) and (c), or with the regulations therein authorized, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 nor more than $1,000.

(c) *Failure of wholesale and retail dealers to display signs.* Any wholesale or retail dealer in filled cheese who fails or neglects to comply with the provisions of section 4834 (a) shall be deemed guilty of a misdemeanor, and shall on conviction thereof be fined for each and every offense not less than $50 and not more than $200.

(d) *Omission or removal of label.* Every manufacturer of filled cheese who neglects to affix the label provided for in section 4833 (a)(2) to any package containing filled cheese made by him or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, shall be fined $50 for each package in respect to which such offense is committed.

(e) *Purchasing when special tax not paid.* Every person who knowingly purchases or receives for sale any filled cheese from any manufacturer or importer who has not paid the special tax provided for in section 4841 shall be liable, for each offense, to a penalty of $100.

(f) *Purchasing when not stamped, branded, or marked according to law.* Any person who knowingly purchases or receives for sale any filled cheese which has not been branded or stamped according to law, or which is contained in packages not branded or marked according to law, shall be liable to a penalty of $50 for each such offense.

§ 301.7267 Statutory provisions; offenses relating to white phosphorus matches.

SEC. 7267. *Offenses relating to white phosphorus matches*—(a) *Exportation of matches.* Any person guilty of violation of section 4805(b) shall be fined not less than $1,000 and not more than $5,000.

(b) *Offenses not specifically covered.* If any manufacturer of white phosphorus matches, or any importer or exporter of matches, shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or conducting his business, or shall do anything prohibited by subchapter B of chapter 39, if there be no specific penalty or punishment imposed by any other provision of this chapter or chapter 68 for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited, he shall be fined $1,000 for each offense.

(c) *Omission of label from packages.* Every manufacturer of white phosphorus matches who neglects to affix the label required by section 4804(a)(4) to any original package containing stamped packages of white phosphorus matches made by him or sold or removed by or for him, and every person who removes any such label so affixed from any such original package, shall be fined not more than $50 for each package in respect of which such offense is committed.

(d) *Omission of factory number from packages.* Every manufacturer of white phosphorus matches who omits to mark, brand, affix, stamp, or print the factory number required under section 4804(b) on every package of white phosphorus matches manufactured, sold, or removed by him shall be fined not more than $50 for each package in respect of which such offense is committed.

§ 301.7268 Statutory provisions; possession with intent to sell in fraud of law or to evade tax.

SEC. 7268. *Possession with intent to sell in fraud of law or to evade tax.* Every person who shall have in his custody or possession any goods, wares, merchandise, articles, or objects on which taxes are imposed by law, for the purpose of selling the same in fraud of the internal revenue laws, or with design to avoid payment of the taxes imposed thereon, shall be liable to a penalty of $500 or not less than double the amount of taxes fraudulently attempted to be evaded.

§ 301.7269 Statutory provisions; failure to produce records.

SEC. 7269. *Failure to produce records.* Whoever fails to comply with any duty imposed upon him by section 6018, 6036 (in the case of an executor), or 6075(a), or, having in his possession or control any record, file, or paper, containing or supposed to contain

any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Secretary or his delegate who desires to examine the same in the performance of his duties under chapter 11 (relating to estate taxes), shall be liable to a penalty of not exceeding $500, to be recovered, with costs of suit, in a civil action in the name of the United States.

§ 301.7269–1 Failure to produce records.

Whoever fails to comply with any duty imposed upon him by section 6018, 6036 (in the case of an executor), or 6075(a), or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request of any officer or employee of the Internal Revenue Service who desires to examine the same in the performance of his duties under chapter 11 of the Code (relating to estate taxes) shall be liable to a penalty of not exceeding $500, to be recovered with costs of suit, in a civil action in the name of the United States.

§ 301.7270 Statutory provisions; insurance policies.

SEC. 7270. *Insurance policies.* Any person who fails to comply with the requirements of section 4374 (relating to the affixing of stamps on insurance policies, etc.), with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of the tax.

§ 301.7271 Statutory provisions; penalties for offenses relating to stamps.

SEC. 7271. *Penalties for offenses relating to stamps.* Any person who with respect to any tax payable by stamps—

(1) *Failure to attach or cancel stamps, etc.* Fails to comply with rules or regulations prescribed pursuant to section 6804 (relating to attachment, cancellation, etc., of stamps), unless such failure is shown to be due to reasonable cause and not willful neglect; or

(2) *Manufacture or offer for sale.* Manufactures or imports and sells, or offers for sale, or causes to be manufactured or imported and sold, or offered for sale, any playing cards, package, or other article without the full amount of tax being duly paid; or

(3) *Instruments.* Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid; or

(4) *Disposal and receipt of stamped packages.* In the case of any container which is stamped, branded, or marked (whether or not under authority of law) in such manner as to show that the provisions of the internal revenue laws with respect to the contents or intended contents thereof have been complied with, and which is empty or contains any contents other than contents therein when the container was lawfully stamped, branded, or marked—

(A) Transfers or receives (whether by sale, gift, or otherwise) such container knowing it to be empty or to contain such other contents; or

(B) Stamps, brands, or marks such container, or otherwise produces such a stamped, branded, or marked container, knowing it to be empty or to contain such other contents;

shall be liable for each such offense to a penalty of $50.

§ 301.7272 Statutory provisions; penalty for failure to register.

SEC. 7272. *Penalty for failure to register*—(a) *In general.* Any person (other than persons required to register under subtitle E, or persons engaging in a trade or business on which a special tax is imposed by such subtitle) who fails to register with the Secretary or his delegate as required by this title or by regulations issued thereunder shall be liable to a penalty of $50.

(b) *Cross references.* For provisions relating to persons required by this title to register, see sections 4101, 4412, 4455, 4722, 4753, 4804(d), and 7011.

[Sec. 7272 as amended by sec. 4(b)(8), Tax Rate Extension Act 1958 (72 Stat. 260); sec. 204 (6), (7), Excise Tax Technical Changes Act 1958 (72 Stat. 1429)]

§ 301.7272–1 Penalty for failure to register.

(a) Any person who fails to register with the district director as required by the Code or by regulations issued thereunder shall be liable to a penalty of $50 except that on and after September 3, 1958, this section shall not apply to persons required to register under subtitle E of the Code, or persons engaging in a trade or business on which a special tax is imposed by such subtitle.

(b) For provisions relating to registration under sections 4101, 4412, 4455, 4722, 4753, and 4804(d), see the regulations relating to the particular tax. For regulations under section 7011, see § 301.7011–1.

§ 301.7273 Statutory provisions; penalties for offenses relating to special taxes.

SEC. 7273. *Penalties for offenses relating to special taxes*—(a) *General rule.* Any person who shall fail to place and keep stamps denoting the payment of the special tax as provided in section 6806 (a) or (b) (whichever is applicable) shall be liable to a penalty equal to the special tax for which his business rendered him liable (unless such failure is shown to be due to reasonable cause); but in no case shall said penalty be less than $10. Where the failure to comply with the provisions of section 6806 (a) or (b) shall be through willful neglect or refusal, then the penalty shall be double the amount above prescribed. Nothing in this subsection shall in any way affect the liability of any person for exercising or carrying on any trade, business, or profession, or doing any act for the exercising, carrying on, or doing of which a special tax is imposed by law, without the payment thereof.

(b) *Failure to post or exhibit special wagering tax stamp.* Any person who, through negligence, fails to comply with section 6806(c) relating to the posting or exhibiting of the special wagering tax stamp, shall be liable to a penalty of $50. Any person who, through willful neglect or refusal, fails to comply with section 6806(c) shall be liable to a penalty of $100.

§ 301.7274 Statutory provisions; penalty for offenses relating to white phosphorus matches.

SEC. 7274. *Penalty for offenses relating to white phosphorus matches.* Any manufacturer of white phosphorus matches who omits to mark, brand, affix, stamp, or print the factory number required under section 4804(b) on every package of white phosphorus matches manufactured, sold, or removed by him shall be liable to a penalty of $50 for each package in respect of which such offense is committed.

§ 301.7275 Statutory provisions; failure to print correct price on tickets.

SEC. 7275. *Failure to print correct price on tickets.* For penalty applicable to certain offenses relating to admissions taxes, see section 4234(b).

FORFEITURES

PROPERTY SUBJECT TO FORFEITURE

§ 301.7301 Statutory provisions; property subject to tax.

SEC. 7301. *Property subject to tax*—(a) *Taxable articles.* Any property on which, or for or in respect whereof, any tax is imposed by this title which shall be found in the possession or custody or within the control of any person, for the purpose of being sold or removed by him in fraud of the internal revenue laws, or with design to avoid payment of such tax, or which is removed, deposited, or concealed, with intent to defraud the United States of such tax or any part thereof, may be seized, and shall be forfeited to the United States.

(b) *Raw materials.* All property found in the possession of any person intending to manufacture the same into property of a kind subject to tax for the purpose of selling such taxable property in fraud of the internal revenue laws, or with design to evade the payment of such tax, may also be seized, and shall be forfeited to the United States.

(c) *Equipment.* All property whatsoever, in the place or building, or any yard or enclosure, where the property described in subsection (a) or (b) is found, or which is intended to be used in the making of property described in subsection (a), with intent to defraud the United States of tax or any part thereof, on the property described in subsection (a) may also be seized, and shall be forfeited to the United States.

(d) *Packages.* All property used as a container for, or which shall have contained, property described in subsection (a) or (b) may also be seized, and shall be forfeited to the United States.

(e) *Conveyances.* Any property (including aircraft, vehicles, vessels, or draft animals) used to transport or for the deposit or concealment of property described in subsection (a) or (b), or any property used to transport or for the deposit or concealment of property which is intended to be used in the making or packaging of property described in subsection (a), may also be seized, and shall be forfeited to the United States.

[Sec. 7301 as amended by sec. 204(8), Excise Tax Technical Changes Act 1958 (72 Stat. 1429)]

§ 301.7302 Statutory provisions; property used in violation of internal revenue laws.

SEC. 7302. *Property used in violation of internal revenue laws.* It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property right shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal revenue laws, or of any other law. The seizure and forfeiture of any property under the provisions of this section and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property,

shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal revenue laws.

§ 301.7303 Statutory provisions; other property subject to forfeiture.

SEC. 7303. *Other property subject to forfeiture.* There may be seized and forfeited to the United States the following:

(1) *Counterfeit stamps.* Every stamp involved in the offense described in section 7208 (relating to counterfeit, reused, cancelled, etc., stamps), and the vellum parchment, document, paper, package, or article upon which such stamp was placed or impressed in connection with such offense.

(2) [Repealed].

(3) *Offenses by manufacturer or importer of or wholesale dealer in oleomargarine or adulterated butter.* All oleomargarine or adulterated butter owned by any manufacturer or importer of or wholesale dealer in oleomargarine or adulterated butter, or in which he has any interest as owner, if he shall knowingly or willfully omit, neglect, or refuse to do, or cause to be done, any of the things required by law in the carrying on or conducting of his business, or if he shall do anything prohibited by subchapter F of chapter 38, or subchapter C of chapter 39.

(4) *Purchase or receipt of filled cheese or adulterated butter.* All articles of filled cheese or adulterated butter (or the full value thereof) knowingly purchased or received by any person from any manufacturer or importer who has not paid the special tax provided in section 4821 or 4841.

(5) *Packages of oleomargarine or filled cheese.* All packages of oleomargarine or filled cheese subject to the tax under subchapter F of chapter 38, or part II of subchapter C of chapter 39, whichever is applicable, that shall be found without the stamps or marks provided for in the applicable subchapter or part thereof.

(6) *White phosphorus matches.* (A) All packages of white phosphorus matches subject to tax under subchapter B of chapter 39 and found without the stamps required by subchapter B of chapter 39.

(B) All the white phosphorus matches owned by any manufacturer of white phosphorus matches, or any importer or exporter of matches, or in which he has any interest as owner if he shall omit, neglect, or refuse to do or cause to be done any of the things required by law in carrying on or conducting his business, or shall do anything prohibited by subchapter B of chapter 39, if there be no specific penalty or punishment imposed by any other provision of subchapter B of chapter 39 for the neglecting, omitting, or refusing to do, or for the doing or causing to be done, the thing required or prohibited.

(7) *False stamping of packages.* Any container involved in the offense described in section 7271 (relating to disposal of stamped packages), and of the contents of such container.

(8) *Fraudulent bonds, permits, and entries.* All property to which any false or fraudulent instrument involved in the offense described in section 7207 relates.

[Sec. 7303 as amended by sec. 1(c), Act of Sept. 2, 1958 (Pub. Law 85-881, 72 Stat. 1704)]

§ 301.7304 Statutory provisions; penalty for fraudulently claiming drawback.

SEC. 7304. *Penalty for fraudulently claiming drawback.* Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal tax shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid, he shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of $500, at the election of the Secretary or his delegate.

§ 301.7304–1 Penalty for fraudulently claiming drawback.

Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal tax shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid, he shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of $500, at the election of the district director.

PROVISIONS COMMON TO FORFEITURES

§ 301.7321 Statutory provisions; authority to seize property subject to forfeiture.

SEC. 7321. *Authority to seize property subject to forfeiture.* Any property subject to forfeiture to the United States under any provision of this title may be seized by the Secretary or his delegate.

§ 301.7321–1 Seizure of property.

Any property subject to forfeiture to the United States under any provision of the Code may be seized by the district director or assistant regional commissioner (alcohol and tobacco tax). Upon seizure of property by the district director he shall notify the assistant regional commissioner (alcohol and tobacco tax) for the region wherein the district is located who will take charge of the property and arrange for its disposal or retention under the provisions of law and regulations applicable thereto.

§ 301.7322 Statutory provisions; delivery of seized personal property to United States marshal.

SEC. 7322. *Delivery of seized personal property to United States marshal.* Any forfeitable property which may be seized under the provisions of this title may, at the option of the Secretary or his delegate, be delivered to the United States marshal of the district, and remain in the care and custody and under the control of such marshal, pending disposal thereof as provided by law.

§ 301.7322–1 Delivery of seized property to United States marshal.

Any forfeitable property which may be seized under the provisions of the Code may, at the option of the assistant regional commissioner (alcohol and tobacco tax), be delivered to the United States marshal of the judicial district wherein the property was seized, and remain in the care and custody and under the control of such marshal, pending the disposal thereof as provided by law.

§ 301.7323 Statutory provisions; judicial action to enforce forfeiture.

SEC. 7323. *Judicial action to enforce forfeiture*—(a) *Nature and venue.* The proceedings to enforce such forfeitures shall be in the nature of a proceeding in rem in the United States District Court for the district where such seizure is made.

(b) *Service of process when property has been returned under bond.* In case bond as provided in section 7324(3) shall have been executed and the property returned before seizure thereof by virtue of process in the proceedings in rem authorized in subsection (a) of this section, the marshal shall give notice of pendency of proceedings in court to the parties executing said bond, by personal service or publication, and in such manner and form as the court may direct, and the court shall thereupon have jurisdiction of said matter and parties in the same manner as if such property had been seized by virtue of the process aforesaid.

(c) *Cost of seizure taxable.* The cost of seizure made before process issues shall be taxable by the court.

§ 301.7324 Statutory provisions; special disposition of perishable goods.

SEC. 7324. *Special disposition of perishable goods.* When any property which is seized under the provisions of section 7301 or section 7302 is liable to perish or become greatly reduced in price or value by keeping, or when it cannot be kept without great expense—

(1) *Application for examination.* The owner thereof, or the United States marshal of the district, may apply to the Secretary or his delegate to examine it; and

(2) *Appraisal.* If, in the opinion of the Secretary or his delegate, it shall be necessary that such property should be sold to prevent such waste or expense, the Secretary or his delegate shall appraise the same; and thereupon

(3) *Return to owner under bond.* The owner shall have such property returned to him upon giving bond in an amount equal to such appraised value to abide the final order, decree, or judgment of the court having cognizance of the case, and to pay the amount of said appraised value to the Secretary or his delegate, the United States marshal, or otherwise, as may be ordered and directed by the court, which bond shall be filed by the Secretary or his delegate with the United States attorney for the district in which the proceedings in rem authorized in section 7323 may be commenced.

(4) *Sale in absence of bond*—(A) *Order to sell.* If such owner shall neglect or refuse to give such bond, the Secretary or his delegate shall issue to any Treasury officer or employee or to the United States marshal an order to sell the same.

(B) *Manner of sale.* Such Treasury officer or employee or the marshal shall as soon as practicable make public sale of such property in accordance with such regulations as may be prescribed by the Secretary or his delegate.

(C) *Disposition of proceeds.* The proceeds of the sale, after deducting the reasonable costs of the seizure and sale, shall be paid to the court to abide its final order, decree, or judgment.

(5) *Form of bond and sureties.* For provisions relating to form and sureties on bonds, see section 7101.

[Sec. 7324 as amended by sec. 204(9), Excise Tax Technical Changes Act 1958 (72 Stat. 1429); sec. 78, Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.7324–1 Special disposition of perishable goods.

For regulations relating to the disposal of perishable goods, see § 172.30 of this chapter (Disposition of Seized Personal Property).

§ 301.7325 Statutory provisions; personal property valued at $2,500 or less.

SEC. 7325. *Personal property valued at $2,500 or less.* In all cases of seizure of any goods, wares, or merchandise as being subject to forfeiture under any provision of this title which, in the opinion of the Secretary or his delegate, are of the appraised value of $2,500 or less, the Secretary or his delegate shall, except in cases otherwise provided, proceed as follows:

(1) *List and appraisement.* The Secretary or his delegate shall cause a list containing a particular description of the goods, wares,

or merchandise seized to be prepared in duplicate, and an appraisement thereof to be made by three sworn appraisers, to be selected by the Secretary or his delegate who shall be respectable and disinterested citizens of the United States residing within the internal revenue district wherein the seizure was made. Such list and appraisement shall be properly attested by the Secretary or his delegate and such appraisers. Each appraiser shall be allowed for his services such compensation as the Secretary or his delegate shall by regulations prescribe, to be paid in the manner similar to that provided for other necessary charges incurred in collecting internal revenue.

(2) *Notice of seizure.* If such goods are found by such appraisers to be of the value of $2,500 or less, the Secretary or his delegate shall publish a notice for 3 weeks, in some newspaper of the district where the seizure was made, describing the articles and stating the time, place, and cause of their seizure, and requiring any person claiming them to appear and make such claim within 30 days from the date of the first publication of such notice.

(3) *Execution of bond by claimant.* Any person claiming the goods, wares, or merchandise so seized, within the time specified in the notice, may file with the Secretary or his delegate a claim, stating his interest in the articles seized, and may execute a bond to the United States in the penal sum of $250, conditioned that, in case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bond to the Secretary or his delegate, he shall transmit the same, with the duplicate list or description of the goods seized, to the United States attorney for the district, and such attorney shall proceed thereon in the ordinary manner prescribed by law.

(4) *Sale in absence of bond.* If no claim is interposed and no bond is given within the time above specified, the Secretary or his delegate shall give reasonable notice of the sale of the goods, wares, or merchandise by publication, and, at the time and place specified in the notice, shall, unless otherwise provided by law, sell the articles so seized at public auction, or upon competitive bids, in accordance with such regulations as may be prescribed by the Secretary or his delegate.

[Sec. 7325 as amended by sec. 204(10), (12), Excise Tax Technical Changes Act 1958 (72 Stat. 1429); sec. 78, Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.7325–1 Personal property valued at $2,500 or less.

For regulations relating to the forfeiture of personal property valued at $2,500 or less, see Part 172 of this chapter (Disposition of Seized Personal Property).

§ 301.7326 Statutory provisions; disposal of forfeited or abandoned property in special cases.

SEC. 7326. *Disposal of forfeited or abandoned property in special cases*—(a) *Coin-operated gaming devices.* Any coin-operated gaming device as defined in section 4462(a)(2) upon which a tax is imposed by section 4461 and which has been forfeited under any provision of this title shall be destroyed, or otherwise disposed of, in such manner as may be prescribed by the Secretary or his delegate.

(b) *Narcotic drugs.* For provisions relating to disposal of forfeited narcotic drugs, see sections 4714, 4733, and 4745(d).

(c) *Firearms.* For provisions relating to disposal of forfeited firearms, see section 5862(b).

[Sec. 7326 as amended by sec. 204(13), Excise Tax Technical Changes Act 1958 (72 Stat. 1429)]

§ 301.7326–1 Disposal of forfeited or abandoned property in special cases.

(a) *Coin-operated gaming devices.* For regulations relating to the disposal of coin-operated gaming devices, see § 172.65 of this chapter (Disposition of Seized Personal Property).

(b) *Narcotics.* For regulations relating to the disposal of forfeited narcotic drugs, see 21 CFR 302.56. For the disposal of forfeited marihuana, see 26 CFR (1939) 152.99 and 152.100 (Regulations under the Marihuana Tax Act of 1937, as amended).

(c) *Firearms.* For regulations relating to the disposal of forfeited firearms, see § 177.102 of this chapter (Interstate Traffic in Firearms and Ammunition), and § 179.191 of this chapter (Machine Guns and Certain Other Firearms).

§ 301.7327 Statutory provisions; customs laws applicable.

SEC. 7327. *Customs laws applicable.* The provisions of law applicable to the remission or mitigation by the Secretary or his delegate of forfeitures under the customs laws shall apply to forfeitures incurred or alleged to have been incurred under the internal revenue laws.

§ 301.7327–1 Customs laws applicable.

For regulations relating to the remission or mitigation of forfeitures, see Part 172 of this chapter (Disposition of Seized Personal Property).

§ 301.7328 Statutory provisions; confiscation of matches exported.

SEC. 7328. *Confiscation of matches exported.* Any white phosphorus matches exported or attempted to be exported shall be confiscated to the United States and destroyed in such manner as may be prescribed by the Secretary or his delegate.

§ 301.7328–1 Confiscation of matches exported.

Any white phosphorus matches exported or attempted to be exported shall be seized by the district director and destroyed by the assistant regional commissioner (alcohol and tobacco tax) in such manner as he may deem appropriate.

§ 301.7329 Statutory provisions; cross references.

SEC. 7329. *Cross references.*

(1) For the issuance of certificates of probable cause relieving officers making seizures of responsibility for damages, see 28 U.S.C. 2465.

(2) For provisions relating to forfeitures generally in connection with alcohol taxes, see chapter 51.

(3) For provisions relating to forfeitures generally in connection with tobacco taxes, see chapter 52.

(4) For provisions relating to forfeitures generally in connection with taxes on certain firearms, see chapter 53.

MISCELLANEOUS PENALTY AND FORFEITURE PROVISIONS

§ 301.7341 Statutory provisions; penalty for sales to evade tax.

SEC. 7341. *Penalty for sales to evade tax*—(a) *Nonenforceability of contract.* Whenever any person who is liable to pay any tax imposed by this title upon, for, or in respect of, any property sells or causes or allows the same to be sold before such tax is paid, with intent to avoid such tax, or in fraud of the internal revenue laws, any debt contracted in such sale, and any security given therefor, unless the same shall have been bona fide transferred to an innocent holder, shall be void, and the collection thereof shall not be enforced in any court.

(b) *Forfeiture of sum paid on contract.* If such property has been paid for, in whole or in part, the sum so paid shall be deemed forfeited.

(c) *Moiety.* Any person who shall sue for the sum so paid (in an action of debt) shall recover from the seller the amount so paid, one-half to his own use and the other half to the use of the United States.

§ 301.7342 Statutory provisions; penalty for refusal to permit entry or examination.

SEC. 7342. *Penalty for refusal to permit entry or examination.* Any owner of any building or place, or person having the agency or superintendence of the same, who refuses to admit any officer or employee of the Treasury Department acting under the authority of section 7606 (relating to entry of premises for examination of taxable articles) or refuses to permit him to examine such article or articles, shall, for every such refusal, forfeit $500.

§ 301.7343 Statutory provisions; definition of term "person".

SEC. 7343. *Definition of term "person".* The term "person" as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 301.7344 Statutory provisions; extended application of penalties relating to officers of the Treasury Department.

SEC. 7344. *Extended application of penalties relating to officers of the Treasury Department.* All provisions of law imposing fines, penalties, or other punishment for offenses committed by an internal revenue officer or other officer of the Department of the Treasury, or under any agency or office thereof, shall apply to all persons whomsoever, employed, appointed, or acting under the authority of any internal revenue law, or any revenue provision of any law of the United States, when such persons are designated or acting as officers or employees in connection with such law, or are persons having the custody or disposition of any public money.

Judicial Proceedings

CIVIL ACTIONS BY THE UNITED STATES

§ 301.7401 Statutory provisions; authorization.

SEC. 7401. *Authorization.* No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced.

§ 301.7401–1 Authorization.

No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner (or the Director, Al-

cohol and Tobacco Tax Division, with respect to the provisions of subtitle E of the Code) authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced. With respect to forfeitures, the assistant regional commissioner or supervisor in charge (alcohol and tobacco tax) may also authorize or sanction the proceedings.

§ 301.7402 Statutory provisions; jurisdiction of district courts.

SEC. 7402. *Jurisdiction of district courts*—(a) *To issue orders, processes, and judgments.* The district courts of the United States at the instance of the United States shall have such jurisdiction to make and issue in civil actions, writs and orders of injunction, and of *ne exeat republica*, orders appointing receivers, and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws.

(b) *To enforce summons.* If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides or may be found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(c) *For damages to United States officers or employees.* Any officer or employee of the United States acting under authority of this title, or any person acting under or by authority of any such officer or employee, receiving any injury to his person or property in the discharge of his duty shall be entitled to maintain an action for damages therefor, in the district court of the United States, in the district wherein the party doing the injury may reside or shall be found.

(d) *Action on bonds.* The United States district courts, concurrently with the courts of the several States, shall have jurisdiction of any action brought on the official bond of any internal revenue officer or employee required to give bond under regulations promulgated by authority of section 7803.

(e) *General jurisdiction.* For general jurisdiction of the district courts of the United States in civil actions involving internal revenue, see section 1340 of title 28 of the United States Code.

§ 301.7403 Statutory provisions; action to enforce lien or to subject property to payment of tax.

SEC. 7403. *Action to enforce lien or to subject property to payment of tax*—(a) *Filing.* In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Secretary or his delegate, may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under this title with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title, or interest, to the payment of such tax or liability.

(b) *Parties.* All persons having liens upon or claiming any interest in the property involved in such action shall be made parties thereto.

(c) *Adjudication and decree.* The court shall, after the parties have been duly notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States.

(d) *Receivership.* In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Secretary or his delegate during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

§ 301.7403–1 Action to enforce lien or to subject property to payment of tax.

In any case where there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or his delegate, at the request of the Commissioner (or the Director, Alcohol and Tobacco Tax Division, with respect to the provisions of subtitle E of the Code) may direct a civil action to be filed in a district court of the United States to enforce the lien of the United States under the Code with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which he has any right, title or interest, to the payment of such tax or liability. In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Commissioner during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

§ 301.7404 Statutory provisions; authority to bring civil action for estate taxes.

SEC. 7404. *Authority to bring civil action for estate taxes.* If the estate tax imposed by chapter 11 is not paid on or before the due date thereof, the Secretary or his delegate shall proceed to collect the tax under the provisions of general law; or appropriate proceedings in the name of the United States may be commenced in any court of the United States having jurisdiction to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This section insofar as it applies to the collection of a deficiency shall be subject to the provisions of sections 6213 and 6601.

§ 301.7404–1 Authority to bring civil action for estate taxes.

(a) If the estate tax imposed by chapter 11 of the Code is not paid on or before the last date prescribed for payment, the district director shall proceed to collect the tax under the provisions of general law; or appropriate proceedings in the name of the United States may be commenced in any court having jurisdiction to subject the property of the decedent to be sold under the judgment or decree of the court.

(b) The remedy by action provided in section 7404 is not exclusive. The district director may proceed to collect the tax by levy, as provided in section 6331, on any or all property or rights to property of the estate, or collection may be enforced by an appropriate action against the executor, certain transferees, trustees, and beneficiaries for their personal liability. See § 20.2002–1 of this chapter (Estate Tax Regulations).

§ 301.7405 Statutory provisions; action for recovery of erroneous refunds.

SEC. 7405. *Action for recovery of erroneous refunds*—(a) *Refunds after limitation period.* Any portion of a tax imposed by this title, refund of which is erroneously made, within the meaning of section 6514, may be recovered by civil action brought in the name of the United States.

(b) *Refunds otherwise erroneous.* Any portion of a tax imposed by this title which has been erroneously refunded (if such refund would not be considered as erroneous under section 6514) may be recovered by civil action brought in the name of the United States.

(c) *Interest.* For provision relating to interest on erroneous refunds, see section 6602.

(d) *Periods of limitation.* For periods of limitations on actions under this section, see section 6532(b).

§ 301.7406 Statutory provisions; disposition of judgments and moneys recovered.

SEC. 7406. *Disposition of judgments and moneys recovered.* All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties shall be paid to the Secretary or his delegate as collections of internal revenue taxes.

§ 301.7406–1 Disposition of judgments and moneys recovered.

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties shall be paid to the district director as collections of internal revenue taxes.

§ 301.7407 Statutory provisions; cross references.

SEC. 7407. *Cross references.* (1) For provisions for collecting taxes in general, see chapter 64.

(2) For venue in a civil action for the collection of any tax, see section 1396 of Title 28 of the United States Code.

(3) For venue of a proceeding for the recovery of any fine, penalty, or forfeiture, see section 1395 of Title 28 of the United States Code.

PROCEEDINGS BY TAXPAYERS

§ 301.7421 Statutory provisions; prohibition of suits to restrain assessment or collection.

SEC. 7421. *Prohibition of suits to restrain assessment or collection*—(a) *Tax.* Except as provided in sections 6212 (a) and (c), and 6213(a), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

(b) *Liability of transferee or fiduciary.* No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of—

(1) The amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or

(2) The amount of the liability of a fiduciary under section 3467 of the Revised Statutes (31 U.S.C. 192) in respect of any such tax.

§ 301.7422 Statutory provisions; civil actions for refund.

SEC. 7422. *Civil actions for refund*—(a) *No suit prior to filing claim for refund.* No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary or his delegate, according to the provisions of law in that regard, and the regulations of the Secretary or his delegate established in pursuance thereof.

(b) *Protest or duress.* Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

(c) *Suits against collection officer a bar.* A suit against any officer or employee of the United States (or former officer or employee) or his personal representative for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected shall be treated as if the United States had been a party to such suit in applying the doctrine of res judicata in all suits instituted after June 15, 1942, in respect of any internal revenue tax, and in all proceedings in the Tax Court and on review of decisions of the Tax Court where the petition to the Tax Court was filed after such date.

(d) *Credit treated as payment.* The credit of an overpayment of any tax in satisfaction of any tax liability shall, for the purpose of any suit for refund of such tax liability so satisfied, be deemed to be a payment in respect of such tax liability at the time such credit is allowed.

(e) *Stay of proceedings.* If the Secretary or his delegate prior to the hearing of a suit brought by a taxpayer in a district court or the Court of Claims for the recovery of any income tax, estate tax, or gift tax (or any penalty relating to such taxes) mails to the taxpayer a notice that a deficiency has been determined in respect of the tax which is the subject matter of taxpayer's suit, the proceedings in taxpayer's suit shall be stayed during the period of time in which the taxpayer may file a petition with the Tax Court for a redetermination of the asserted deficiency, and for 60 days thereafter. If the taxpayer files a petition with the Tax Court, the district court or the Court of Claims, as the case may be, shall lose jurisdiction of taxpayer's suit to whatever extent jurisdiction is acquired by the Tax Court of the subject matter of taxpayer's suit for refund. If the taxpayer does not file a petition with the Tax Court for a redetermination of the asserted deficiency, the United States may counterclaim in the taxpayer's suit, or intervene in the event of a suit as described in subsection (c) (relating to suits against officers or employees of the United States), within the period of the stay of proceedings notwithstanding that the time for such pleading may have otherwise expired. The taxpayer shall have the burden of proof with respect to the issues raised by such counterclaim or intervention of the United States except as to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax. This subsection shall not apply to a suit by a taxpayer which, prior to the date of enactment of this title, is commenced, instituted, or pending in a district court or the Court of Claims for the recovery of any income tax, estate tax, or gift tax (or any penalty relating to such taxes).

(f) *Cross references.* (1) For provisions relating generally to claims for refund or credit, see chapter 65 (relating to abatements, credit, and refund) and chapter 66 (relating to limitations).

(2) For duty of United States attorneys to defend suits, see section 507 of Title 28 of the United States Code.

(3) For jurisdiction of United States district courts, see section 1346 of Title 28 of the United States Code.

(4) For payment by the Treasury of judgments against internal revenue officers or employees, upon certificate of probable cause, see section 2006 of Title 28 of the United States Code.

[Sec. 7422 as amended by sec. 78 Technical Amendments Act 1958 (72 Stat. 1662)]

§ 301.7423 Statutory provisions; repayments to officers or employees.

SEC. 7423. *Repayments to officers or employees.* The Secretary or his delegate, subject to regulations prescribed by the Secretary or his delegate, is authorized to repay—

(1) *Collections recovered.* To any officer or employee of the United States the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expense of suit; also

(2) *Damages and costs.* All damages and costs recovered against any officer or employee of the United States in any suit brought against him by reason of anything done in the due performance of his official duty under this title.

SEC. 2006 [Title 28, United States Code]. *Execution against revenue officer.* Execution shall not issue against a collector [district director] or other revenue officer on a final judgment in any proceeding against him for any of his acts, or for the recovery of any money exacted by or paid to him and subsequently paid into the Treasury, in performing his official duties, if the court certifies that:

(1) Probable cause existed; or

(2) The officer acted under the directions of the Secretary of the Treasury or other proper Government officer.

When such certificate has been issued, the amount of the judgment shall be paid out of the proper appropriation by the Treasury.

[28 U.S.C. 2006, enacted into positive law by Act of June 25, 1948 (Pub. Law 773, 80th Cong., 62 Stat. 960)]

§ 301.7423–1 Repayments to officers or employees.

The Commissioner is authorized to repay to any officer or employee of the United States the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expense of suit, and all damages and costs recovered against any officer or employee of the United States in any suit brought against him by reason of anything done in the official performance of his duties under the Code.

§ 301.7424 Statutory provisions; civil action to clear title to property.

SEC. 7424. *Civil action to clear title to property*—(a) *Obtaining leave to file*—(1) *Request for institution of proceedings by United States.* Any person having a lien upon or any interest in the property referred to in section 7403, notice of which has been duly filed of record in the jurisdiction in which the property is located, prior to the filing of notice of the lien of the United States as provided in section 6323, or any person purchasing the property at a sale to satisfy such prior lien or interest, may make written request to the Secretary or his delegate to authorize the filing of a civil action as provided in section 7403.

(2) *Petition to court.* If the Secretary or his delegate fails to authorize the filing of such civil action within 6 months after receipt of such written request, such person or purchaser may, after giving notice to the Secretary or his delegate, file a petition in the district court of the United States for the district in which the property is located, praying leave to file a civil action for a final determination of all claims to or liens upon the property in question.

(3) *Court order.* After a full hearing in open court, the district court may in its discretion enter an order granting leave to file such civil action, in which the United States and all persons having liens upon or claiming any interest in the property shall be made parties.

(b) *Adjudication.* Upon the filing of such civil action, district court shall proceed to adjudicate the matters involved therein, in the same manner as in the case of civil actions filed under section 7403. For the purpose of such adjudication, the assessment of the tax upon which the lien of the United States is based shall be conclusively presumed to be valid.

(c) *Costs.* All costs of the proceedings on the petition and the civil action shall be borne by the person filing the civil action.

§ 301.7424–1 Civil action to clear title to property.

(a) Any person having a lien upon or any interest in the property referred to in section 7403, notice of which has been duly filed of record in the jurisdiction in which the property is located, prior to the filing of the notice of the lien of the United States as provided in section 6323, or any person purchasing the property at a sale to satisfy such prior lien or interest, may make a written request to the Commissioner to authorize the filing of a civil action as provided in section 7403.

(b) If the Commissioner fails to authorize the filing of such civil action within 6 months after receipt of such written request, such person or purchaser may, after giving notice to the Commissioner, file a petition in the district court of the United States for the district in which the property is located, praying leave to file a civil action for a final determination of all claims to or liens upon the property in question.

§ 301.7425 Statutory provisions; cross references.

SEC. 7425. *Cross references.* (1) For exclusion of tax liability from discharge in bankruptcy, see section 17 of the Bankruptcy Act, as amended (52 Stat. 851; 11 U.S.C. 35).

(2) For limit on amount allowed in bankruptcy proceedings on debts owing to the United States, see section 57(j) of the Bankruptcy Act, as amended (52 Stat. 867; 11 U.S.C. 93).

(3) For recognition of tax liens in proceedings under the Bankruptcy Act, see section 67 (b) and (c) of that act, as amended (52 Stat. 876–877; 11 U.S.C. 107).

(4) For collection of taxes in connection with wage earners' plans in bankruptcy courts, see section 680 of the Bankruptcy Act, as added June 22, 1938 (52 Stat. 938; 11 U.S.C. 1080).

(5) For provisions permitting the United States to be made party defendant in a proceeding in a State court for the foreclosure of a lien upon real estate where the United States may have claim upon the premises involved, see section 2410 of Title 28 of the United States Code.

(6) For priority of lien of the United States in case of insolvency, see R.S. 3466 (31 U.S.C. 191).

(7) For interest on judgments for overpayments, see section 2411(a) of Title 28 of the United States Code.

(8) For review of a Tax Court decision, see section 7482.

(9) For statute prohibiting suits to replevy property taken under revenue laws, see section 2463 of Title 28 of the United States Code.

THE TAX COURT

ORGANIZATION AND JURISDICTION

§ 301.7441 Statutory provisions; status.

SEC. 7441. *Status.* The Board of Tax Appeals shall be continued as an independent agency in the Executive Branch of the Government, and shall be known as the Tax Court of the United States. The members thereof shall be known as the chief judge and the judges of the Tax Court.

§ 301.7442 Statutory provisions; jurisdiction.

SEC. 7442. *Jurisdiction.* The Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3, and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10–87), or by laws enacted subsequent to February 26, 1926.

§ 301.7443 Statutory provisions; membership.

SEC. 7443. *Membership*—(a) *Number.* The Tax Court shall be composed of 16 members.

(b) *Appointment.* Judges of the Tax Court shall be appointed by the President, by and with the advice and consent of the Senate, solely on the grounds of fitness to perform the duties of the office.

(c) *Salary.* Each judge shall receive salary at the rate of $22,500 per annum, to be paid in monthly installments.

(d) *Expenses for travel and subsistence.* Judges of the Tax Court shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the United States Customs Court.

(e) *Term of office.* The terms of office of all judges of the Tax Court shall expire 12 years after the expiration of the terms for which their predecessors were appointed; but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor.

(f) *Removal from office.* Judges of the Tax Court may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause.

(g) *Disbarment of removed judges.* A judge of the Tax Court removed from office in accordance with subsection (f) shall not be permitted at any time to practice before the Tax Court.

[Sec. 7443(c) as amended by sec. 1(h), Act of Mar. 2, 1955 (Pub. Law 9, 84th Cong., 69 Stat. 10)]

§ 301.7444 Statutory provisions; organization.

SEC. 7444. *Organization*—(a) *Seal.* The Tax Court shall have a seal which shall be judicially noticed.

(b) *Designation of chief judge.* The Tax Court shall at least biennially designate a judge to act as chief judge.

(c) *Divisions.* The chief judge may from time to time divide the Tax Court into divisions of one or more judges, assign the judges of the Tax Court thereto, and in case of a division of more than one judge, designate the chief thereof. If a division, as a result of a vacancy or the absence or inability of a judge assigned thereto to serve thereon, is composed of less than the number of judges designated for the division, the chief judge may assign other judges to the division or direct the division to proceed with the transaction of business without awaiting any additional assignment of judges thereto.

(d) *Quorum.* A majority of the judges of the Tax Court or of any division thereof shall constitute a quorum for the transaction of the business of the Tax Court or of the division, respectively. A vacancy in the Tax Court or in any division thereof shall not impair the powers nor affect the duties of the Tax Court or division nor of the remaining judges of the Tax Court or division, respectively.

§ 301.7445 Statutory provisions; offices.

SEC. 7445. *Offices.* The principal office of the Tax Court shall be in the District of Columbia, but the Tax Court or any of its divisions may sit at any place within the United States.

§ 301.7446 Statutory provisions; times and places of sessions.

SEC. 7446. *Times and places of sessions.* The times and places of the sessions of the Tax Court and of its divisions shall be prescribed by the chief judge with a view to securing reasonable opportunity to taxpayers to appear before the Tax Court or any of its divisions, with as little inconvenience and expense to taxpayers as is practicable.

§ 301.7447 Statutory provisions; retirement.

SEC. 7447. *Retirement*—(a) *Definitions.* For purposes of this section—

(1) The term "Tax Court" means the Tax Court of the United States.

(2) The term "Civil Service Commission" means the United States Civil Service Commission.

(3) The term "judge" means the chief judge or a judge of the Tax Court; but such term does not include any individual performing judicial duties pursuant to subsection (c).

(4) The term "Civil Service Retirement Act" means the Civil Service Retirement Act of May 29, 1930, as amended.

(5) In any determination of length of service as judge there shall be included all periods (whether or not consecutive) during which an individual served as judge or as a member of the Board.

(b) *Retirement.* (1) Any judge who has served as judge for 18 years or more may retire at any time.

(2) Any judge who has served as judge for 10 years or more and has attained the age of 70 shall retire not later than the close of the third month beginning after whichever of the following months is the latest:

(A) The month in which he attained age 70;

(B) The month in which he completed 10 years of service as judge; or

(C) August 1953.

Section 2(a) of the Civil Service Retirement Act (relating to automatic separation from the Service) shall not apply in respect of judges.

(c) *Recalling of retired judges.* Any individual who is receiving retired pay under subsection (d) may be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be requested of him for any period or periods specified by the chief judge; except that in the case of any such individual—

(1) The aggregate of such periods in any one calendar year shall not (without his consent) exceed 90 calendar days; and

(2) He shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a judge of the Tax Court; but any such individual shall not be counted as a judge of the Tax Court for purposes of section 7443(a). Any individual who is performing judicial duties pursuant to this subsection shall be paid the same compensation (in lieu of retired pay) and allowances for travel and other expenses as a judge.

(d) *Retired pay.* Any individual who after August 7, 1953—

(1) Ceases to be a judge by reason of paragraph (2) of subsection (b), or ceases to be a judge after having served as judge for 18 years or more; and

(2) Elects under subsection (e) to receive retired pay under this subsection,

shall receive retired pay at a rate which bears the same ratio to the rate of the salary payable to him as judge at the time he ceases to be a judge as the number of years he has served as judge bears to 24; except that the rate of such retired pay shall be not less than one-half of the rate of such salary and not more than the rate of such salary. Such retired pay shall begin to accrue on the day following the day on which his salary as judge ceases to accrue, and shall continue to accrue during the remainder of his life. Retired pay under this subsection shall be paid in the same manner as the salary of a judge. In computing the rate of the retired pay under this subsection for any individual who is entitled thereto, that portion of the aggregate number of years he has served as a judge which is a fractional part of 1 year shall be eliminated if it is less than 6 months, or shall be counted as a full year if it is 6 months or more.

(e) *Election to receive retired pay.* Any judge may elect to receive retired pay under subsection (d). Such an election—

(1) May be made only while an individual is a judge (except that in the case of an individual who fails to be reappointed as judge at the expiration of a term of office, it may be made at any time before the day after the day on which his successor takes office);

(2) Once made, shall be irrevocable;

(3) In the case of any judge other than the chief judge, shall be made by filing notice thereof in writing with the chief judge; and

(4) In the case of the chief judge, shall be made by filing notice thereof in writing with the Civil Service Commission.

The chief judge shall transmit to the Civil Service Commission a copy of each notice filed with him under this subsection.

(f) *Individuals receiving retired pay to be available for recall.* Any individual who has elected to receive retired pay under subsection (d) who thereafter—

(1) Accepts civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to subsection (c)); or

(2) Performs (or supervises or directs the performance of) legal or accounting services in the field of Federal taxation or in the field of the renegotiation of Federal contracts for his client, his employer, or any of his employer's clients,

shall forfeit all rights to retired pay under subsection (d) for all periods beginning on or after the first day on which he accepts such office or employment or engages in any activity described in paragraph (2). Any individual who has elected to receive retired

pay under subsection (d) who thereafter during any calendar year fails to perform judicial duties required of him by subsection (c) shall forfeit all rights to retired pay under subsection (d) for the 1-year period which begins on the first day on which he so fails to perform such duties.

(g) *Coordination with Civil Service retirement*—(1) *General rule.* Except as otherwise provided in this subsection, the provisions of the Civil Service Retirement Act (including the provisions relating to the deduction and withholding of amounts from basic pay, salary, and compensation) shall apply in respect of service as a judge (together with other service as an officer or employee to whom such Act applies) as if this section had not been enacted.

(2) *Effect of electing retired pay.* In the case of any individual who has filed an election to receive retired pay under subsection (d) and who has not filed a waiver under paragraph (3) of this subsection—

(A) He shall not be entitled to any annuity under section 1, 2, 3A, 6, or 7 of the Civil Service Retirement Act for any period beginning on or after the day on which he files such election;

(B) No amount shall be returned to him under section 7(a) of such Act;

(C) Subsections (b) and (c) of section 4 of such Act, and subsection (c) of section 12 of such Act, shall apply in respect of such individual as if he were retiring or had retired under section 1 of such Act on the date on which his retired pay under subsection (d) of this section began to accrue; except that—

(i) The amount of any annuity payable to a survivor of such individual under subsection (b) or (c) of such section 4 or under subsection (c) of such section 12 shall be based on a life annuity for such individual computed as provided in subsection (a) of such section 4, and

(ii) If such individual makes the election provided by subsection (b) or (c) of such section 4, his retired pay under subsection (d) of this section shall be reduced by the amount by which a life annuity computed as provided in subsection (a) of such section 4 would be reduced;

(D) In computing the aggregate amount of the annuity paid for purposes of section 12 (g) of such Act, any retired pay which has accrued under subsection (d) of this section (including any such retired pay forfeited under subsection (f)) shall be included as if it were an annuity payable to him under such Act; and

(E) No deduction for purposes of the civil service retirement and disability fund shall be made from the retired pay payable to him under subsection (d) of this section, or from any other salary, pay, or compensation payable to him, for any period after the date on which such retired pay began to accrue.

(3) *Waiver of civil service benefits.* (A) Any individual who has elected to receive retired pay under subsection (d) of this section may (at any time thereafter during the period prescribed by subsection (e)(1)) waive all benefits under the Civil Service Retirement Act. Such a waiver—

(i) Once made, shall be irrevocable, and

(ii) Shall be made in the same manner as is provided for an election by such individual under subsection (e). The chief judge shall transmit to the Civil Service Commission a copy of each notice of waiver filed with him under this paragraph.

(B) In the case of any individual who has made a waiver under this paragraph—

(i) No annuity shall be payable to any person under the Civil Service Retirement Act with respect to any service performed by such individual (whether performed before or after such waiver is filed and whether performed as judge or otherwise);

(ii) No deduction shall be made from any salary, pay, or compensation of such individual for purposes of the civil service retirement and disability fund for any period beginning after the day on which such waiver is filed;

(iii) Except as provided in clause (iv), no refund shall be made under the Civil Service Retirement Act of any amount credited to the account of such individual or of any interest on any amounts so credited;

(iv) Additional sums voluntarily deposited by such individual under the second paragraph of section 10 of the Civil Service Retirement Act shall be promptly refunded, together with interest on such additional sums at 3 percent per annum (compounded on December 31 of each year) to the day of such filing; and

(v) Subsections (e) and (g) of section 12 of the Civil Service Retirement Act shall not apply.

(4) *Employees' compensation.* The fourth and sixth paragraphs of section 6 of the Civil Service Retirement Act shall apply in respect of retired pay accruing under subsection (d) of this section as if such retired pay were an annuity payable under such act.

PROCEDURE

§ 301.7451 Statutory provisions; fee for filing petition.

SEC. 7451. *Fee for filing petition.* The Tax Court is authorized to impose a fee in an amount not in excess of $10 to be fixed by the Tax Court for the filing of any petition for the redetermination of a deficiency.

§ 301.7452 Statutory provisions; representation of parties.

SEC. 7452. *Representation of parties.* The Secretary or his delegate shall be represented by the Chief Counsel for the Internal Revenue Service or his delegate in the same manner before the Tax Court as he has heretofore been represented in proceedings before such Court. The taxpayer shall continue to be represented in accordance with the rules of practice prescribed by the Court. No qualified person shall be denied admission to practice before the Tax Court because of his failure to be a member of any profession or calling.

[Sec. 7452 as amended by sec. 2(a), Act of Sept. 22, 1959 (Pub. Law 86-368, 73 Stat. 648)]

§ 301.7452–1 Representation of parties.

The Commissioner shall be represented by the Chief Counsel for the Internal Revenue Service in the same manner before the Tax Court as he has heretofore been represented in proceedings before such Court. The taxpayer shall continue to be represented in accordance with the rules of practice prescribed by the Court.

§ 301.7453 Statutory provisions; rules of practice, procedure, and evidence.

SEC. 7453. *Rules of practice, procedure, and evidence.* The proceedings of the Tax Court and its divisions shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Tax Court may prescribe and in accordance with the rules of evidence applicable in trials without a jury in the United States District Court of the District of Columbia.

§ 301.7454 Statutory provisions; burden of proof in fraud and transferee cases.

SEC. 7454. *Burden of proof in fraud and transferee cases*—(a) *Fraud.* In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Secretary or his delegate.

(b) *Cross reference.* For provisions relating to burden of proof as to transferee liability, see section 6902(a).

§ 301.7454–1 Burden of proof in fraud and transferee cases.

In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Commissioner.

§ 301.7455 Statutory provisions; service of process.

SEC. 7455. *Service of process.* The mailing by certified mail or registered mail of any pleading, decision, order, notice, or process in respect of proceedings before the Tax Court shall be held sufficient service of such pleading, decision, order, notice, or process.

[Sec. 7455 as amended by sec. 89(b), Technical Amendments Act 1958 (72 Stat. 1665)]

§ 301.7456 Statutory provisions; administration of oaths and procurement of testimony.

SEC. 7456. *Administration of oaths and procurement of testimony*—(a) *In general.* For the efficient administration of the functions vested in the Tax Court or any division thereof, any judge of the Tax Court, the clerk of the court or his deputies, as such, or any other employee of the Tax Court designated in writing for the purpose by the chief judge, may administer oaths, and any judge of the Tax Court may examine witnesses and require, by subpoena ordered by the Tax Court or any division thereof and signed by the judge (or by the clerk of the Tax Court or by any other employee of the Tax Court when acting as deputy clerk)—

(1) The attendance and testimony of witnesses, and the production of all necessary returns, books, papers, documents, correspondence, and other evidence, from any place in the United States at any designated place of hearing, or

(2) The taking of a deposition before any designated individual competent to administer oaths under this title. In the case of a deposition the testimony shall be reduced to writing by the individual taking the deposition or under his direction and shall then be subscribed by the deponent.

(b) *Production of records in the case of foreign corporations, foreign trusts or estates and nonresident alien individuals.* The Tax Court or any division thereof, upon motion and notice by the Secretary or his delegate, and upon good cause shown therefor, shall order any foreign corporation, foreign trust or estate, or nonresident alien individual, who has filed a petition with the Tax Court, to produce, or, upon satisfactory proof to the Tax Court or any of its divisions, that the petitioner is unable to produce, to make available to the Secretary or his delegate, and, in either case, to permit the inspection, copying, or photographing of, such books, records, documents, memoranda, correspondence and other papers, wherever situated, as the Tax Court or any division thereof, may deem relevant to the proceedings and which are in the possession, custody or control of the petitioner, or of any person directly or indirectly under his control or having control over him or subject to the same common control. If the petitioner fails or refuses to comply with any of the provisions of such order, after reasonable time for compliance has been afforded to him, the Tax Court or any division thereof, upon motion, shall make an order striking out pleadings or parts thereof, or dismissing the proceeding or any

part thereof, or rendering a judgment by default against the petitioner. For the purpose of this subsection, the term "foreign trust or estate" includes an estate or trust, any fiduciary of which is a foreign corporation or nonresident alien individual; and the term "control" is not limited to legal control.

(c) *Commissioners.* The chief judge may from time to time by written order designate an attorney from the legal staff of the Tax Court to act as a commissioner in a particular case. The commissioner so designated shall proceed under such rules and regulations as may be promulgated by the Tax Court. The commissioner shall receive the same travel and subsistence allowances now or hereafter provided by law for commissioners of the United States Court of Claims.

§ 301.7456–1 Administration of oaths and procurement of testimony; production of records of foreign corporations, foreign trusts or estates and nonresident alien individuals.

Upon motion and notice by the Commissioner and upon good cause shown therefor, the Tax Court or any division thereof shall order any foreign corporation, foreign trust or estate, or nonresident alien individual, who has filed a petition with the Tax Court, to produce, or, upon satisfactory proof to the Tax Court or any of its divisions that the petitioner is unable to produce, to make available to the Commissioner, and, in either case, to permit the inspection, copying, or photographing of, such books, records, documents, memoranda, correspondence and other papers, wherever situated, as the Tax Court or any of its divisions may deem relevant to the proceedings and which are in the possession, custody or control of the petitioner, or of any person directly or indirectly under his control or having control over him or subject to the same common control.

§ 301.7457 Statutory provisions; witness fees.

SEC. 7457. *Witness fees*—(a) *Amount.* Any witness summoned or whose deposition is taken under section 7456 shall receive the same fees and mileage as witnesses in courts of the United States.

(b) *Payment.* Such fees and mileage and the expenses of taking any such deposition shall be paid as follows:

(1) *Witnesses for Secretary or his delegate.* In the case of witnesses for the Secretary or his delegate, such payments shall be made by the Secretary or his delegate out of any moneys appropriated for the collection of internal revenue taxes, and may be made in advance.

(2) *Other witnesses.* In the case of any other witnesses, such payments shall be made, subject to rules prescribed by the Tax Court, by the party at whose instance the witness appears or the deposition is taken.

§ 301.7457–1 Witness fees.

Any witness summoned for the Commissioner or whose deposition is taken under section 7456 shall receive the same fees and mileage as witnesses in courts of the United States. Such fees and mileage and the expense of taking any such deposition shall be paid by the Commissioner out of any moneys appropriated for the collection of internal revenue taxes, and may be paid in advance.

§ 301.7458 Statutory provisions; hearings.

SEC. 7458. *Hearings.* Notice and opportunity to be heard upon any proceeding instituted before the Tax Court shall be given to the taxpayer and the Secretary or his delegate. If an opportunity to be heard upon the proceeding is given before a division of the Tax Court, neither the taxpayer nor the Secretary nor his delegate shall be entitled to notice and opportunity to be heard before the Tax Court upon review, except upon a specific order of the chief judge. Hearings before the Tax Court and its divisions shall be open to the public, and the testimony, and, if the Tax Court so requires, the argument, shall be stenographically reported. The Tax Court is authorized to contract (by renewal of contract or otherwise) for the reporting of such hearings, and in such contract to fix the terms and conditions under which transcripts will be supplied by the contractor to the Tax Court and to other persons and agencies.

§ 301.7458–1 Hearings.

Notice and opportunity to be heard upon any proceeding instituted before the Tax Court shall be given to the taxpayer and the Commissioner. If an opportunity to be heard upon the proceeding is given before a division of the Tax Court, neither the taxpayer nor the Commissioner shall be entitled to notice and opportunity to be heard before the Tax Court upon review, except upon a specific order of the chief judge.

§ 301.7459 Statutory provisions; reports and decisions.

SEC. 7459. *Reports and decisions*—(a) *Requirement.* A report upon any proceeding instituted before the Tax Court and a decision thereon shall be made as quickly as practicable. The decision shall be made by a judge in accordance with the report of the Tax Court, and such decision so made shall, when entered, be the decision of the Tax Court.

(b) *Inclusion of findings of fact or opinions in report.* It shall be the duty of the Tax Court and of each division to include in its report upon any proceeding its findings of fact or opinion or memorandum opinion. The Tax Court shall report in writing all its findings of fact, opinions, and memorandum opinions.

(c) *Date of decision.* A decision of the Tax Court (except a decision dismissing a proceeding for lack of jurisdiction) shall be held to be rendered upon the date that an order specifying the amount of the deficiency is entered in the records of the Tax Court. If the Tax Court dismisses a proceeding for reasons other than lack of jurisdiction and is unable from the record to determine the amount of the deficiency determined by the Secretary or his delegate, or if the Tax Court dismisses a proceeding for lack of jurisdiction, an order to that effect shall be entered in the records of the Tax Court, and the decision of the Tax Court shall be held to be rendered upon the date of such entry.

(d) *Effect of decision dismissing petition.* If a petition for a redetermination of a deficiency has been filed by the taxpayer, a decision of the Tax Court dismissing the proceeding shall be considered as its decision that the deficiency is the amount determined by the Secretary or his delegate. An order specifying such amount shall be entered in the records of the Tax Court unless the Tax Court cannot determine such amount from the record in the proceeding, or unless the dismissal is for lack of jurisdiction.

(e) *Effect of decision that tax is barred by limitation.* If the assessment or collection of any tax is barred by any statute of limitations, the decision of the Tax Court to that effect shall be considered as its decision that there is no deficiency in respect of such tax.

(f) *Findings of fact as evidence.* The findings of the Board of Tax Appeals made in connection with any decision prior to February 26, 1926, shall, notwithstanding the enactment of the Revenue Act of 1926 (44 Stat. 9), continue to be prima facie evidence of the facts therein stated.

(g) *Penalty.* For penalty for taxpayer instituting proceedings before Tax Court merely for delay, see section 6673.

§ 301.7460 Statutory provisions; provisions of special application to divisions.

SEC. 7460. *Provisions of special application to divisions*—(a) *Hearings, determinations, and reports.* A division shall hear, and make a determination upon, any proceeding instituted before the Tax Court and any motion in connection therewith, assigned to such division by the chief judge, and shall make a report of any such determination which constitutes its final disposition of the proceeding.

(b) *Effect of action by a division.* The report of the division shall become the report of the Tax Court within 30 days after such report by the division, unless within such period the chief judge has directed that such report shall be reviewed by the Tax Court. Any preliminary action by a division which does not form the basis for the entry of the final decision shall not be subject to review by the Tax Court except in accordance with such rules as the Tax Court may prescribe. The report of a division shall not be a part of the record in any case in which the chief judge directs that such report shall be reviewed by the Tax Court.

§ 301.7461 Statutory provisions; publicity of proceedings.

SEC. 7461. *Publicity of proceedings.* All reports of the Tax Court and all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public; except that after the decision of the Tax Court in any proceeding has become final the Tax Court may, upon motion of the taxpayer or the Secretary or his delegate, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Tax Court or any division; or the Tax Court may, on its own motion, make such other disposition thereof as it deems advisable.

§ 301.7461–1 Publicity of proceedings.

All reports of the Tax Court and all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public; except that after the decision of the Tax Court in any proceeding has become final the Tax Court may, upon motion of the taxpayer or the Commissioner, permit the withdrawal by the party entitled thereto of the originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Tax Court or any of its divisions; or the Tax Court may, on its own action, make such other disposition thereof as it deems advisable.

§ 301.7462 Statutory provisions; publication of reports.

SEC. 7462. *Publication of reports.* The Tax Court shall provide for the publication of its reports at the Government Printing Office in such form and manner as may be best adapted for public information and use.

and such authorized publication shall be competent evidence of the reports of the Tax Court therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. Such reports shall be subject to sale in the same manner and upon the same terms as other public documents.

§ 301.7463 Statutory provisions; provisions of special application to transferees.

SEC. 7463. *Provisions of special application to transferees.* (1) For rules of burden of proof in transferee proceedings, see section 6902(a).

(2) For authority of Tax Court to prescribe rules by which a transferee of property of a taxpayer shall be entitled to examine books, records and other evidence, see section 6902(b).

MISCELLANEOUS PROVISIONS

§ 301.7471 Statutory provisions; employees.

SEC. 7471. *Employees*—(a) *Appointment and compensation.* The Tax Court is authorized in accordance with the civil service laws to appoint, and in accordance with the Classification Act of 1949 (63 Stat. 954; 5 U.S.C. chapter 21), as amended, to fix the compensation of, such employees as may be necessary efficiently to execute the functions vested in the Tax Court.

(b) *Expenses for travel and subsistence.* The employees of the Tax Court shall receive their necessary traveling expenses, and expenses for subsistence while traveling on duty and away from their designated stations, as provided in the Travel Expense Act of 1949 (63 Stat. 166; 5 U.S.C. chapter 16).

(c) *Commissioners.* For travel and subsistence allowances of commissioners of the Tax Court, see section 7456(c).

§ 301.7472 Statutory provisions; expenditures.

SEC. 7472. *Expenditures.* The Tax Court is authorized to make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals), as may be necessary efficiently to execute the functions vested in the Tax Court. All expenditures of the Tax Court shall be allowed and paid, out of any moneys appropriated for purposes of the Tax Court, upon presentation of itemized vouchers therefor signed by the certifying officer designated by the chief judge.

§ 301.7473 Statutory provisions; disposition of fees.

SEC. 7473. *Disposition of fees.* All fees received by the Tax Court shall be covered into the Treasury as miscellaneous receipts.

§ 301.7474 Statutory provisions; fee for transcript of record.

SEC. 7474. *Fee for transcript of record.* The Tax Court is authorized to fix a fee, not in excess of the fee fixed by law to be charged and collected therefor by the clerks of the district courts, for comparing, or for preparing and comparing, a transcript of the record, or for copying any record, entry, or other paper and the comparison and certification thereof.

COURT REVIEW OF TAX COURT DECISIONS

§ 301.7481 Statutory provisions; date when Tax Court decision becomes final.

SEC. 7481. *Date when Tax Court decision becomes final.* The decision of the Tax Court shall become final—

(1) *Timely petition for review not filed.* Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; or

(2) *Decision affirmed or petition for review dismissed*—(A) *Petition for certiorari not filed on time.* Upon the expiration of the time allowed for filing a petition for certiorari, if the decision of the Tax Court has been affirmed or the petition for review dismissed by the United States Court of Appeals and no petition for certiorari has been duly filed; or

(B) *Petition for certiorari denied.* Upon the denial of a petition for certiorari, if the decision of the Tax Court has been affirmed or the petition for review dismissed by the United States Court of Appeals; or

(C) *After mandate of Supreme Court.* Upon the expiration of 30 days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the decision of the Tax Court be affirmed or the petition for review dismissed.

(3) *Decision modified or reversed*—(A) *Upon mandate of Supreme Court.* If the Supreme Court directs that the decision of the Tax Court be modified or reversed, the decision of the Tax Court rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Secretary or his delegate or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(B) *Upon mandate of the Court of Appeals.* If the decision of the Tax Court is modified or reversed by the United States Court of Appeals, and if—

(i) The time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(ii) The petition for certiorari has been denied, or

(iii) The decision of the United States Court of Appeals has been affirmed by the Supreme Court, then the decision of the Tax Court rendered in accordance with the mandate of the United States Court of Appeals shall become final on the expiration of 30 days from the time such decision of the Tax Court was rendered, unless within such 30 days either the Secretary or his delegate or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(4) *Rehearing.* If the Supreme Court orders a rehearing; or if the case is remanded by the United States Court of Appeals to the Tax Court for a rehearing, and if—

(A) The time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(B) The petition for certiorari has been denied, or

(C) The decision of the United States Court of Appeals has been affirmed by the Supreme Court,

then the decision of the Tax Court rendered upon such rehearing shall become final in the same manner as though no prior decision of the Tax Court has been rendered.

(5) *Definition of "mandate".* As used in this section, the term "mandate", in case a mandate has been recalled prior to the expiration of 30 days from the date of issuance thereof, means the final mandate.

§ 301.7481–1 Date when Tax Court decision becomes final; decision modified or reversed.

(a) *Upon mandate of Supreme Court.* Under section 7481(3)(A) of the Code, if the Supreme Court directs that the decision of the Tax Court be modified or reversed, the decision of the Tax Court rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

(b) *Upon mandate of the Court of Appeals.* Under section 7481(3)(B) of the Code, if the decision of the Tax Court is modified or reversed by the United States Court of Appeals, and if—

(i) The time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(ii) The petition for certiorari has been denied, or

(iii) The decision of the United States Court of Appeals has been affirmed by the Supreme Court, then the decision of the Tax Court rendered in accordance with the mandate of the United States Court of Appeals shall become final on the expiration of 30 days from the time such decision of the Tax Court was rendered, unless within such 30 days either the Commissioner or the taxpayer has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Tax Court shall become final when so corrected.

§ 301.7482 Statutory provisions; courts of review.

SEC. 7482. *Courts of review*—(a) *Jurisdiction.* The United States Courts of Appeals shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of Title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of Title 28 of the United States Code.

(b) *Venue*—(1) *In general.* Except as provided in paragraph (2), such decisions may be reviewed by the United States Court of Appeals for the circuit in which is located the office to which was made the return of the tax in respect of which the liability arises, or, if no return was made, then by the United States Court of Appeals for the District of Columbia.

(2) *By agreement.* Notwithstanding the provisions of paragraph (1), such decisions may be reviewed by any United States Court of Appeals which may be designated by the Secretary or his delegate and the taxpayer by stipulation in writing.

(c) *Powers*—(1) *To affirm, modify, or reverse.* Upon such review, such courts shall have power to affirm or, if the decision of the Tax Court is not in accordance with law, to modify or to reverse the decision of the Tax Court, with or without remanding the case for a rehearing, as justice may require.

(2) *To make rules.* Rules for review of decisions of the Tax Court shall be those prescribed by the Supreme Court under section 2074 of title 28 of the United States Code. Until such rules become effective the rules adopted under authority of section 1141(c)(2) of the Internal Revenue Code of 1939 shall remain in effect.

(3) *To require additional security.* Nothing in section 7483 shall be construed as relieving the petitioner from making or filing such undertakings as the court may require

as a condition of or in connection with the review.

(4) *To impose damages.* The United States Court of Appeals and the Supreme Court shall have power to impose damages in any case where the decision of the Tax Court is affirmed and it appears that the petition was filed merely for delay.

§ 301.7482–1 Courts of review; venue.

Under section 7482(b)(2) of the Code, decisions of the Tax Court may be reviewed by any United States Court of Appeals which may be designated by the Commissioner and the taxpayer by stipulation in writing.

§ 301.7483 Statutory provisions; petition for review.

SEC. 7483. *Petition for review.* The decision of the Tax Court may be reviewed by a United States Court of Appeals as provided in section 7482 if a petition for such review is filed by either the Secretary (or his delegate) or the taxpayer within 3 months after the decision is rendered. If, however, a petition for such review is so filed by one party to the proceeding, a petition for review of the decision of the Tax Court may be filed by any other party to the proceeding within 4 months after such decision is rendered.

§ 301.7483–1 Petition for review.

The decision of the Tax Court may be reviewed by a United States Court of Appeals as provided in section 7482 of the Code if a petition for such review is filed by either the Commissioner or the taxpayer within 3 months after the decision is rendered. If, however, a petition for such review is so filed by one party to the proceeding, a petition for review of the decision of the Tax Court may be filed by any other party to the proceeding within 4 months after such decision is rendered.

§ 301.7484 Statutory provisions; change of incumbent in office.

SEC. 7484. *Change of incumbent in office.* When the incumbent of the office of Secretary or his delegate changes, no substitution of the name of his successor shall be required in proceedings pending before any appellate court reviewing the action of the Tax Court.

§ 301.7484–1 Change of incumbent in office.

When the incumbent of the office of Commissioner changes, no substitution of the name of his successor shall be required in proceedings pending before any appellate court reviewing the action of the Tax Court.

§ 301.7485 Statutory provisions; bond to stay assessment and collection.

SEC. 7485. *Bond to stay assessment and collection*—(a) *Upon petition for review.* Notwithstanding any provision of law imposing restrictions on the assessment and collection of deficiencies, the review under section 7483 shall not operate as a stay of assessment or collection of any portion of the amount of the deficiency determined by the Tax Court unless a petition for review in respect of such portion is duly filed by the taxpayer, and then only if the taxpayer—

(1) On or before the time his petition for review is filed has filed with the Tax Court a bond in a sum fixed by the Tax Court not exceeding double the amount of the portion of the deficiency in respect of which the petition for review is filed, and with surety approved by the Tax Court, conditioned upon the payment of the deficiency as finally determined, together with any interest, additional amounts, or additions to the tax provided for by law, or

(2) Has filed a jeopardy bond under the income or estate tax laws.

If as a result of a waiver of the restrictions on the assessment and collection of a deficiency any part of the amount determined by the Tax Court is paid after the filing of the review bond, such bond shall, at the request of the taxpayer, be proportionately reduced.

(b) *Cross references.* (1) For requirement of additional security notwithstanding this section, see section 7482(c)(3).

(2) For deposit of United States bonds or notes in lieu of sureties, see 6 U.S.C. 15.

§ 301.7486 Statutory provisions; refund, credit, or abatement of amounts disallowed.

SEC. 7486. *Refund, credit, or abatement of amounts disallowed.* In cases where assessment or collection has not been stayed by the filing of a bond, then if the amount of the deficiency determined by the Tax Court is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer, without the making of claim therefor, or, if collection has not been made, shall be abated.

§ 301.7487 Statutory provisions; cross reference.

SEC. 7487. *Cross reference.* For authority of the Tax Court to fix fees for transcripts of records, see section 7474.

MISCELLANEOUS PROVISIONS

§ 301.7491 Statutory provisions; burden of proof of exemptions in case of marihuana offenses.

SEC. 7491. *Burden of proof of exemptions in case of marihuana offenses.* It shall not be necessary to negative any exemptions set forth in part II of subchapter A of chapter 39, relating to marihuana, in any complaint, information, indictment, or other writ or proceeding laid or brought with respect to part II of subchapter A of chapter 39 and the burden of proof of any such exemption shall be upon the defendant. In the absence of the production of evidence by the defendant that he has complied with the provisions of section 4753 relating to registration, or that he has complied with the provisions of section 4742 relating to order forms, he shall be presumed not to have complied with such provisions of such section, as the case may be.

§ 301.7492 Statutory provisions; enforceability of cotton futures contracts.

SEC. 7492. *Enforceability of cotton futures contracts.* No contract of sale of cotton for future delivery mentioned in section 4851(a), which does not conform to the requirements of section 4853 and has not the necessary stamps affixed thereto as required by section 4871, shall be enforceable in any court of the United States by, or on behalf of, any party to such contract or his privies.

§ 301.7493 Statutory provisions; immunity of witnesses in cases relating to cotton futures.

SEC. 7493. *Immunity of witnesses in cases relating to cotton futures.* No person whose evidence is deemed material by the officer prosecuting on behalf of the United States in any case brought under any provision of subchapter D of chapter 39 (relating to cotton futures) shall withhold his testimony because of complicity by him in any violation of subchapter D of chapter 39, or of any regulation made pursuant to such chapter, but any such person called by such officer who testifies in such case shall be exempt from prosecution for any offense to which his testimony relates.

Miscellaneous Provisions

§ 301.7501 Statutory provisions; liability for taxes withheld or collected.

SEC. 7501. *Liability for taxes withheld or collected*—(a) *General rule.* Whenever any person is required to collect or withhold any internal revenue tax from any other person and to pay over such tax to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

(b) *Penalties.* For penalties applicable to violations of this section, see sections 6672 and 7202.

§ 301.7502 Statutory provisions; timely mailing treated as timely filing.

SEC. 7502. *Timely mailing treated as timely filing*—(a) *General rule.* If any claim, statement, or other document (other than a return or other document required under authority of chapter 61), required to be filed within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such claim, statement, or other document is required to be filed, the date of the United States postmark stamped on the cover in which such claim, statement, or other document is mailed shall be deemed to be the date of delivery. This subsection shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of the claim, statement, or other document, determined with regard to any extension granted for such filing, and only if the claim, statement, or other document was, within the prescribed time, deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the agency, office, or officer with which the claim, statement, or other document is required to be filed.

(b) *Stamp machine.* This section shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations prescribed by the Secretary or his delegate.

(c) *Registered and certified mail*—(1) *Registered mail.* If any such claim, statement, or other document is sent by United States registered mail, such registration shall be prima facie evidence that the claim, statement, or other document was delivered to the agency, office, or officer to which addressed, and the date of registration shall be deemed the postmark date.

(2) *Certified mail.* The Secretary or his delegate is authorized to provide by regulations the extent to which the provisions of paragraph (1) of this subsection with respect to prima facie evidence of delivery and the postmark date shall apply to certified mail.

(d) *Exception.* This section shall not apply with respect to the filing of a document in any court other than the Tax Court.

[Sec. 7502 as amended by sec. 89(a), Technical Amendments Act 1958 (72 Stat. 1665)]

§ 301.7502–1 Timely mailing treated as timely filing.

(a) *General rule.* Section 7502 provides that, if the requirements of such section are met, a document shall be deemed to be filed on the date of the postmark stamped on the cover in which such document was mailed. Thus, if the cover containing such document bears a timely postmark, the document will be considered filed timely although it is received after the last date, or the last day of the period, prescribed for filing such document. Section 7502 does not apply to the payment of any tax. Section 7502 is applicable only to those documents which come within the definition of such term provided by paragraph (b) of this section and only if the document is mailed in accordance with paragraph (c) of this section and is delivered in accordance with paragraph (d) of this section.

(b) *Document defined.* (1) The term "document", as used in this section, means any claim, statement, or other document required to be filed within a prescribed period or on or before a prescribed date under authority of any provision of the internal revenue laws, except as provided in the following subdivisions of this subparagraph:

(i) The term does not include any return required under authority of any internal revenue law or any other document required under authority of chapter 61 of the Code. Thus, for example, such term does not include the income tax returns required by section 6012, the declarations of estimated income tax by individuals and corporations required by sections 6015 and 6016, and the estate tax and gift tax returns required by sections 6018 and 6019. Nor does the term include any return required under authority of subtitle E of the Code, relating to alcohol, tobacco, and certain other excise taxes.

(ii) The term does not include any document filed in any court other than the Tax Court, but the term does include any document filed with the Tax Court, including a petition for redetermination of a deficiency and a petition for review of a decision of the Tax Court.

(iii) The term does not include any document which is required to be filed with a bank or other depositary pursuant to section 6302 (c).

(2) A return may contain, or have attached to it, a statement which sets forth an election under the internal revenue laws, In such a case, section 7502 is applicable to the statement if the conditions of such section are met, although it does not apply to the return. Moreover, in the case of certain taxes, a return may constitute a claim for refund or credit. In such a case, section 7502 is applicable to the claim for refund or credit if the conditions of such section are met, irrespective of whether the claim is also a return.

(c) *Mailing requirements.* (1) Section 7502 is not applicable unless the document is mailed in accordance with the following requirements:

(i) The document must be contained in an envelope or other appropriate wrapper, properly addressed to the agency, officer, or office with which the document is required to be filed.

(ii) The document must be deposited within the prescribed time in the mail in the United States with sufficient postage prepaid. For this purpose, a document is deposited in the mail in the United States when it is deposited with the domestic mail service of the United States Post Office. The domestic mail service of the United States Post Office, as defined by the postal regulations, includes mail transmitted within, among, and between the United States, its Territories and possessions, and Army-Air Force (APO) and Navy (FPO) post offices (see 39 CFR 2.1). Section 7502 does not apply to any document which is deposited with the mail service of any other country.

(iii) (*a*) If the postmark on the envelope or wrapper is made by the United States Post Office, such postmark must bear a date on or before the last date, or the last day of the period, prescribed for filing the document. If the postmark does not bear a date on or before the last date, or the last day of the period, prescribed for filing the document, the document will be considered not to be filed timely, regardless of when the document is deposited in the mail. Accordingly, the sender who relies upon the applicability of section 7502 assumes the risk that the postmark will bear a date on or before the last date, or the last day of the period, prescribed for filing the document, but see subparagraph (2) of this paragraph with respect to the use of registered mail or certified mail to avoid this risk. If the postmark on the envelope or wrapper is not legible, the person who is required to file the document has the burden of proving the time when the postmark was made. Furthermore, in case the cover containing a document bearing a timely postmark made by the United States Post Office is received after the time when a document postmarked and mailed at such time would ordinarily be received, the sender may be required to prove that it was timely mailed.

(*b*) If the postmark on the envelope or wrapper is made other than by the United States Post Office, (*1*) the postmark so made must bear a date on or before the last date, or the last day of the period, prescribed for filing the document, and (*2*) the document must be received by the agency, officer, or office with which it is required to be filed not later than the time when a document contained in an envelope or other appropriate wrapper which is properly addressed and mailed and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of origin by the United States Post Office on the last date, or the last day of the period, prescribed for filing the document. However, in case the document is received after the time when a document so mailed and so postmarked by the United States Post Office would ordinarily be received, such document will be treated as having been received at the time when a document so mailed and so postmarked would ordinarily be received, if the person who is required to file the document establishes (*i*) that it was actually deposited in the mail before the last collection of the mail from the place of deposit which was postmarked (except for the metered mail) by the United States Post Office on or before the last date, or the last day of the period, prescribed for filing the document, (*ii*) that the delay in receiving the document was due to a delay in the transmisssion of the mail, and (*iii*) the cause of such delay. If the envelope has a postmark made by the United States Post Office in addition to the postmark not so made, the postmark which was not made by the United States Post Office shall be disregarded, and whether the envelope was mailed in accordance with this subdivision shall be determined solely by applying the rule of (*a*) of this subdivision.

(2) If the document is sent by United States registered mail, the date of registration of the document shall be treated as the postmark date. If the document is sent by United States certified mail and the sender's receipt is postmarked by the postal employee to whom such document is presented, the date of the United States postmark on such receipt shall be treated as the postmark date of the document. Accordingly, the risk that the document will not be postmarked on the day that it is deposited in the mail may be overcome by the use of registered mail or certified mail.

(3) As used in this section, the term "the last date, or the last day of the period, prescribed for filing the document" includes any extension of time granted for such filing. When the last date, or the last day of the period, prescribed for filing the document falls on a Saturday, Sunday, or legal holiday, section 7503 is also applicable, so that, in applying the rules of this paragraph, the next succeeding day which is not a Saturday, Sunday, or legal holiday shall be treated as the last date, or the last day of the period, prescribed for filing the document.

(d) *Delivery.* (1) Section 7502 is not applicable unless the document is delivered by United States mail to the agency, officer, or office with which it is required to be filed. However, if the document is sent by registered mail or certified mail, proof that the document was properly registered or that a postmarked certified mail sender's receipt was properly issued therefor, and that the envelope or wrapper was properly addressed to such agency, officer, or office shall constitute prima facie evidence that the document was delivered to such agency, officer, or office.

(2) Section 7502 is applicable only when the document is delivered after the last date, or the last day of the period, prescribed for filing the document. However, section 7502 is also applicable when a claim for credit or refund is delivered after the last day of the period specified in section 322 (b) (2) of the Internal Revenue Code of 1939 or in any other corresponding provision of law relating to the limit on the amount of credit or refund that is allowable. For example, taxpayer A was required

to file his income tax return for 1953 on or before March 15, 1954, but he secured an extension until June 15, 1954, to file such return. His return was filed on June 15, 1954, but no tax was paid at such time because the tax liability disclosed by the return had been completely satisfied by the income tax that had been withheld on his wages and by the payments of estimated tax. On March 14, 1957, A mailed in accordance with the requirements of this section a claim for refund of a portion of his 1953 tax. The envelope containing the claim was postmarked on such day, but it was not delivered to the district director's office until March 18, 1957. Under section 322 (b) (1) of the Internal Revenue Code of 1939, A's claim for refund is timely if filed within three years from June 15, 1954. However, as a result of the limitation of section 322 (b) (2) of the 1939 Code, if his claim is not filed within three years after March 15, 1954, the date on which he is deemed under section 322 (e) of the 1939 Code to have paid his 1953 tax, he is not entitled to any refund. Thus, since A's claim for refund was mailed in accordance with the requirements of this section and was delivered after the last day of the period specified in such section 322 (b) (2), section 7502 is applicable, and the claim is deemed to have been filed on March 14, 1957.

(e) *Applicability*—(1) *General rule.* Except as provided in subparagraph (2) of this paragraph, section 7502 and this section are applicable with respect to any document which is mailed and delivered in accordance with the requirements of this section and which is mailed in an envelope having a postmark bearing a date after August 16, 1954, irrespective of whether the postmark is made by the United States Post Office, and irrespective of whether the tax to which the document pertains is imposed by the Code or a prior internal revenue law.

(2) *Exception.* The provisions of section 7502 and this section which specifically apply to certified mail are applicable only if the mailing occurs on or after January 15, 1960.

§ 301.7503 Statutory provisions; time for performance of acts where last day falls on Saturday, Sunday, or legal holiday.

SEC. 7503. *Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday.* When the last day prescribed under authority of the internal revenue laws for performing any act falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. For purposes of this section, the last day for the performance of any act shall be determined by including any authorized extension of time; the term "legal holiday" means a legal holiday in the District of Columbia; and in the case of any return, statement, or other document required to be filed, or any other act required under authority of the internal revenue laws to be performed, at any office of the Secretary or his delegate, or at any other office of the United States or any agency thereof, located outside the District of Columbia but within an internal revenue district, the term "legal holiday" also means a Statewide legal holiday in the State where such office is located.

§ 301.7503–1 Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday.

(a) *In general.* Section 7503 provides that when the last day prescribed under authority of any internal revenue law for the performance of any act falls on a Saturday, Sunday, or legal holiday, such act shall be considered performed timely if performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For this purpose, any authorized extension of time shall be included in determining the last day for performance of any act. Section 7503 is applicable only in case an act is required under authority of any internal revenue law to be performed on or before a prescribed date or within a prescribed period. For example, if the 2-year period allowed by section 6532(a)(1) to bring a suit for refund of any internal revenue tax expires on Thursday, November 22, 1956 (Thanksgiving Day), the suit will be timely if filed on Friday, November 23, 1956, in the Court of Claims, or in a district court. Section 7503 applies to acts to be performed by the taxpayer (such as, the filing of any return of, and the payment of, any income, estate, or gift tax; the filing of a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by such Court; the filing of a claim for credit or refund of any tax) and acts to be performed by the Commissioner or a district director (such as, the giving of any notice with respect to, or making any demand for the payment of, any tax; the assessment or collection of any tax).

(b) *Legal holidays.* (1) For the purpose of section 7503, the term "legal holiday" includes the legal holidays in the District of Columbia. Such legal holidays are—

(i) January 1, New Year's Day (D. C. Code, Title 28, sec. 616),

(ii) January 20, when such day is Inauguration Day (D. C. Code, Title 28, sec. 616),

(iii) February 22, Washington's Birthday (D.C. Code, Title 28, sec. 616),

(iv) May 30, Memorial Day (D. C. Code, Title 28, sec. 616),

(v) July 4, Independence Day (D. C. Code, Title 28, sec. 616),

(vi) First Monday in September, Labor Day (5 U. S. C. 87),

(vii) November 11, Veterans' Day (5 U. S. C. 87a, as amended),

(viii) Fourth Thursday in November, Thanksgiving Day (5 U. S. C. 87b), and

(ix) December 25, Christmas Day (D.C. Code, Title 28, sec. 616).

When a legal holiday in the District of Columbia falls on a Sunday, the next day is a legal holiday in the District of Columbia (see D. C. Code, Title 28, sec. 616).

(2) In the case of any return, statement, or other document required to be filed, or any other act required under the authority of the internal revenue laws to be performed, at any office of the Internal Revenue Service, or any other office or agency of the United States, located outside the District of Columbia, but within an internal revenue district, the term "legal holiday" includes, in addition to the legal holidays enumerated in subparagraph (1) of this paragraph, any State-wide legal holiday of the State where the act is required to be performed. If the act is performed in accordance with law at an office of the Internal Revenue Service or any other office or agency of the United States located in a Territory or possession of the United States, the term "legal holiday" includes, in addition to the legal holidays described in subparagraph (1) of this paragraph, any legal holiday which is recognized throughout the Territory or possession in which the office is located.

(c) *Applicability.* Section 7503 and this section are applicable in any case when the last day prescribed under authority of any internal revenue law for the performance of any act falls on a Saturday, Sunday, or legal holiday, which occurs after August 16, 1954, irrespective of whether the tax in connection with which the act is required to be performed is imposed by this title or a prior internal revenue law.

§ 301.7504 Statutory provisions; fractional parts of a dollar.

SEC. 7504. *Fractional parts of a dollar.* The Secretary or his delegate may by regulations provide that in the allowance of any amount as a credit or refund, or in the collection of any amount as a deficiency or underpayment, of any tax imposed by this title, a fractional part of a dollar shall be disregarded, unless it amounts to 50 cents or more, in which case it shall be increased to 1 dollar.

§ 301.7505 Statutory provisions; sale of personal property purchased by the United States.

SEC. 7505. *Sale of personal property purchased by the United States*—(a) *Sale.* Any personal property purchased by the United States under the authority of section 6335 (e) (relating to purchase for the account of the United States of property sold under levy) may be sold by the Secretary or his delegate in accordance with such regulations as may be prescribed by the Secretary or his delegate.

(b) *Accounting.* In case of the resale of such property, the proceeds of the sale shall be paid into the Treasury as internal revenue collections, and there shall be rendered a distinct account of all charges incurred in such sales.

§ 301.7505–1 Sale of personal property purchased by the United States.

(a) *Sale*—(1) *In general.* Any personal property (except bonds, notes, checks, and other securities) purchased by the United States under the authority of section 6335(e) (relating to purchase for the account of the United States of property sold under levy) or the corresponding provisions of prior law may be sold by the district director who purchased such property for the United States. United States Savings Bonds shall not be sold by the district director but shall be transferred to the Division of Loans and Currency, Treasury Department, for redemption. Other bonds, notes, checks, and other securities shall be disposed of in accordance with instructions issued by the Commissioner.

(2) *Time, place, manner, and terms of sale.* The time, place, manner, and terms

of sale of personal property purchased for the United States shall be as follows:

(i) *Time, notice, and place of sale.* The property may be sold at any time after it has been purchased by the United States. A public notice of sale shall be posted at the post office nearest the place of sale and in at least two other public places. The notice shall specify the property to be sold and the time, place, manner, and conditions of sale. In addition, the district director may use such other methods of advertising as he believes will result in obtaining the highest price for the property. The place of sale shall be within the internal revenue district where the property was originally purchased for the United States. However, if the district director believes that a substantially higher price may be obtained, the sale may be held outside his district.

(ii) *Rejection of bids and adjournment of sale.* The internal revenue officer conducting the sale reserves the right to reject any and all bids and withdraw the property from the sale. When it appears to the internal revenue officer conducting the sale that an adjournment of the sale will best serve the interest of the United States, he may order the sale adjourned from time to time. If the sale is adjourned for more than 30 days in the aggregate, public notice of the sale must again be given in accordance with subdivision (i) of this subparagraph.

(iii) *Liquidated damages.* The notice shall state whether, in the case of default in payment of the bid price, any amount deposited with the United States will be retained as liquidated damages. In case liquidated damages are provided, the amount thereof shall not exceed $200.

(3) *Agreement to bid.* The district director may, before giving notice of sale, solicit offers from prospective bidders and enter into agreements with such persons that they will bid at least a specified amount in case the property is offered for sale. In such cases, the district director may also require such persons to make deposits to secure the performance of their agreements. Any such deposit, but not more than $200, shall be retained as liquidated damages in case such person fails to bid the specified amount and the property is not sold for as much as the amount specified in such agreement.

(4) *Terms of payment.* The property shall be offered for sale upon whichever of the following terms is fixed by the district director in the public notice of sale—

(i) Payment in full upon acceptance of the highest bid, without regard to the amount of such bid, or

(ii) If the aggregate price of all property purchased by a successful bidder at the sale is more than $200, an initial payment of $200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed one month from the date of the sale.

(5) *Method of sale.* The property may be sold either—

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids.

(6) *Sales under sealed bids.* The following rules, in addition to the other rules provided in this paragraph, shall be applicable to public sales under sealed bids:

(i) *Invitation to bidders.* Bids shall be solicited through a public notice of sale.

(ii) *Form for use by bidders.* A bid shall be submitted on a form which will be furnished by the district director upon request. The form shall be completed in accordance with the instructions thereon.

(iii) *Remittance with bid.* If the total bid is $200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than $200, 20 percent of such bid or $200, whichever is greater, shall be submitted therewith. Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order.

(iv) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope his name and address and the time and place of sale as announced in the public notice of sale. A bid will not be considered unless it is received by the internal revenue officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(v) *Consideration of bids.* The internal revenue officer conducting the sale shall have the right to waive any technical defects in a bid. After the opening, examination, and consideration of all bids, the internal revenue officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders, unless in the opinion of the officer a higher price can be obtained for the property than has been bid. In the event the highest bids are equal in amount (and unless in the opinion of the internal revenue officer conducting the sale a higher price can be obtained for the property than has been bid), the officer shall determine the successful bidder by drawing lots. Any remittance submitted in connection with an unsuccessful bid shall be returned to the bidder at the conclusion of the sale.

(vi) *Withdrawal of bids.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of his bid after it has been opened.

(7) *Payment of bid price.* All payments for property sold pursuant to this section shall be made by cash or by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If payment in full is not made at such time, the internal revenue officer conducting the sale may forthwith proceed again to sell the property in the manner provided in subparagraph (5) of this paragraph. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(8) *Delivery and removal of personal property.* The risk of loss is on the purchaser of the property upon acceptance of his bid. Possession of any property shall not be delivered to the purchaser until the purchase price has been paid in full. If payment of part of the purchase price for the property is deferred, the United States will retain possession of such property as security for the payment of the balance of the purchase price and, as agent for the purchaser, will cause the property to be cared for until the purchase price has been paid in full or the sale is declared null and void for failure to make full payment of the purchase price. In such case, all charges and expenses incurred in caring for the property after acceptance of the bid shall be borne by the purchaser.

(9) *Certificate of sale.* The internal revenue officer conducting the sale shall issue a certificate of sale to the purchaser upon payment in full of the purchase price.

(b) *Accounting.* In case of the resale of such property, the proceeds of the sale shall be paid into the Treasury as internal revenue collections, and there shall be rendered by the district director a distinct account of all charges incurred in such sale. For additional accounting rules, see section 7809 and the instructions thereunder.

§ 301.7506 Statutory provisions; administration of real estate acquired by the United States.

SEC. 7506. *Administration of real estate acquired by the United States*—(a) *Person charged with.* The Secretary or his delegate shall have charge of all real estate which is or shall become the property of the United States by judgment of forfeiture under the internal revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage or other security for the payment of such debts, and of all trusts created for the use of the United States in payment of such debts due them.

(b) *Sale.* The Secretary or his delegate, may, at public sale, and upon not less than 20 days' notice, sell and dispose of any real estate owned or held by the United States as aforesaid.

(c) *Lease.* Until such sale, the Secretary or his delegate may lease such real estate

owned as aforesaid on such terms and for such period as the Secretary or his delegate shall deem proper.

(d) *Release to debtor.* In cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon, at the rate of 1 percent per month, to the United States, within 2 years from the date of the acquisition of such real estate, it shall be lawful for the Secretary or his delegate to release by deed or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives.

§ 301.7506–1 Administration of real estate acquired by the United States.

(a) *Persons charged with.* The district director for the internal revenue district in which the property is situated shall have charge of all real estate which is or shall become the property of the United States by judgment of forfeiture under the internal revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage, or other security for the payment of such debts, or which has been or shall be purchased for the United States under section 6335 (e) or under a corresponding provision of prior law, and of all trusts created for the use of the United States in payment of such debts due the United States.

(b) *Sale.* The district director for the internal revenue district in which the property is situated may sell any real estate owned or held by the United States as aforesaid, subject to the following rules—

(1) *Property purchased at sale under levy.* If the property was acquired as a result of being declared purchased for the United States at a sale under section 6335, relating to sale of seized property, the property shall not be sold until after the expiration of one year after such sale under levy.

(2) *Notice of sale.* A notice of sale shall be published in some newspaper published or generally circulated within the county where the property is situated, or a notice shall be posted at the post office nearest the place where the property is situated and in at least two other public places. The notice shall specify the property to be sold and the time, place, manner, and conditions of sale. In addition, the district director may use other methods of advertising and of giving notice of sale if he believes such methods will enhance the possibility of obtaining a higher price for the property.

(3) *Time and place of sale.* The time of the sale shall be not less than 20 days from the date of giving public notice of sale under subparagraph (2) of this paragraph. The place of sale shall be within the county where the property is situated. However, if the district director believes a substantially better price may be obtained, he may hold the sale outside such county.

(4) *Rejection of bids and adjournment of sale.* The internal revenue officer conducting the sale reserves the right to reject any and all bids and withdraw the property from the sale. When it appears to the internal revenue officer conducting the sale that an adjournment of the sale will best serve the interest of the United States, he may order the sale adjourned from time to time. If the sale is adjourned for more than 30 days in the aggregate, public notice of the sale must be given again in accordance with subparagraph (2) of this paragraph.

(5) *Liquidated damages.* The notice shall state whether, in the case of default in payment of the bid price, any amount deposited with the United States will be retained as liquidated damages. In case liquidated damages are provided, the amount thereof shall not exceed $200.

(6) *Agreement to bid.* The district director may, before giving notice of sale, solicit offers from prospective bidders and enter into agreements with such persons that they will bid at least a specified amount in case the property is offered for sale. In such cases, the district director may also require such persons to make deposits to secure the performance of their agreements. Any such deposit, but not more than $200, shall be retained as liquidated damages in case such person fails to bid the specified amount and the property is not sold for as much as the amount specified in such agreement.

(7) *Terms.* The property shall be offered for sale upon whichever of the following terms is fixed by the district director in the public notice of sale:

(i) Payment in full upon acceptance of the highest bid, or

(ii) If the price of the property purchased by a successful bidder at the sale is more than $200, an initial payment of $200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance within a specified period, not to exceed one month from the date of the sale.

(8) *Method of sale.* The property may be sold either—

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids.

(9) *Sales under sealed bids.* The following rules, in addition to the other rules provided in this paragraph, shall be applicable at public sales under sealed bids:

(i) *Invitation to bidders.* Bids shall be solicited through a public notice of sale.

(ii) *Form for use by bidders.* A bid shall be submitted on a form which will be furnished by the district director upon request. The form shall be completed in accordance with the instructions thereon.

(iii) *Remittance with bid.* If the total bid is $200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than $200, 20 percent of such bid or $200, whichever is greater, shall be submitted therewith. Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order.

(iv) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope his name and address and the time and place of sale as announced in the public notice of sale. A bid shall not be considered unless it is received by the internal revenue officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(v) *Consideration of bids.* The internal revenue officer conducting the sale shall have the right to waive any technical defects in a bid. After the opening, examination, and consideration of all bids, the internal revenue officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders, unless in the opinion of the officer a higher price can be obtained for the property than has been bid. In the event the highest bids are equal in amount (and unless in the opinion of the internal revenue officer conducting the sale a higher price can be obtained for the property than has been bid), the officer shall determine the successful bidder by drawing lots. Any remittance submitted in connection with an unsuccessful bid shall be returned to the bidder at the conclusion of the sale.

(vi) *Withdrawal of bids.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of his bid after it has been opened.

(10) *Payment of bid price.* All payments for property sold pursuant to this section shall be made by cash or by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a United States postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If payment in full is not made at such time, the internal revenue officer conducting the sale may forthwith proceed again to sell the property in the manner provided in subparagraph (8) of this paragraph. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(11) *Deed.* Upon payment in full of the purchase price, the district director shall execute a quitclaim deed to the purchaser.

(c) *Lease.* Until real estate is sold, the district director for the internal revenue district in which the property is situated may, in accordance with instructions is-

sued by the Commissioner, lease such property.

(d) *Release to debtor.* In cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon (at the rate of one percent per month), to the United States within two years from the date of the acquisition of such real estate, the district director for the internal revenue district in which the property is located may release by deed or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives. If property is declared purchased by the United States under section 6335, then, for the purpose of this paragraph, the date of such declaration shall be deemed to be the date of acquisition of such real estate.

(e) *Accounting.* The district director for the internal revenue district in which the property is situated shall, in accordance with section 7809 and the instructions thereunder, account for the proceeds of all sales or leases of the property and all expenses connected with the maintenance, sale, or lease of the property.

(f) *Authority of Commissioner.* Notwithstanding the other paragraphs of this section, the Commissioner may, when he deems it advisable, take charge of and assume responsibility for any real estate to which this section is applicable. In such case, the Commissioner will notify in writing the district director for the internal revenue district in which the property is situated. In any case where a single parcel of real estate is situated in more than one internal revenue district, the Commissioner may designate in writing a district director who shall have charge of and be responsible for the entire property.

§ 301.7507 Statutory provisions; exemption of insolvent banks from tax.

SEC. 7507. *Exemption of insolvent banks from tax*—(a) *Assets in general.* Whenever and after any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has ceased to do business by reason of insolvency or bankruptcy, no tax shall be assessed or collected, or paid into the Treasury of the United States, on account of such bank or trust company, which shall diminish the assets thereof necessary for the full payment of all its depositors; and such tax shall be abated from such national banks as are found by the Comptroller of the Currency to be insolvent; and the Secretary or his delegate, when the facts shall appear to him, is authorized to remit so much of the said tax against any such insolvent banks and trust companies organized under State law as shall be found to affect the claims of their depositors.

(b) *Segregated assets; earnings.* Whenever any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has been released or discharged from its liability to its depositors for any part of their claims against it, and such depositors have accepted, in lieu thereof, a lien upon subsequent earnings of such bank or trust company, or claims against assets segregated by such bank or trust company or against assets transferred from it to an individual or corporate trustee or agent, no tax shall be assessed or collected, or paid into the Treasury of the United States, on account of such bank or trust company, such individual or corporate trustee or such agent, which shall diminish the assets thereof which are available for the payment of such depositor claims and which are necessary for the full payment thereof. The term "agent", as used in this subsection, shall be deemed to include a corporation acting as a liquidating agent.

(c) *Refund; reassessment; statutes of limitation.* (1) Any such tax collected shall be deemed to be erroneously collected, and shall be refunded subject to all provisions and limitations of law, so far as applicable, relating to the refunding of taxes.

(2) Any tax, the assessment, collection, or payment of which is barred under subsection (a), or any such tax which has been abated or remitted after May 28, 1938, shall be assessed or reassessed whenever it shall appear that payment of the tax will not diminish the assets as aforesaid.

(3) Any tax, the assessment, collection, or payment of which is barred under subsection (b), or any such tax which has been refunded after May 28, 1938, shall be assessed or reassessed after full payment of such claims of depositors to the extent of the remaining assets segregated or transferred as described in subsection (b).

(4) The running of the statute of limitations on the making of assessment and collection shall be suspended during, and for 90 days beyond, the period for which, pursuant to this section, assessment or collection may not be made, and a tax may be reassessed as provided in paragraphs (2) and (3) of this subsection and collected, during the time within which, had there been no abatement, collection might have been made.

(d) *Exception of employment taxes.* This section shall not apply to any tax imposed by chapter 21 or chapter 23.

§ 301.7507–1 Banks and trust companies covered.

(a) Section 7507 applies to any national bank, or bank or trust company organized under State law, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, and which has—

(1) Ceased to do business by reason of insolvency or bankruptcy, or

(2) Been released or discharged from its liability to its depositors for any part of their deposit claims, and the depositors have accepted in lieu thereof a lien upon its subsequent earnings or claims against its assets either (i) segregated and held by it for benefit of the depositors or (ii) transferred to an individual or corporate trustee or agent who liquidates, holds or operates the assets for the benefit of the depositors.

(b) As used in this section and §§ 301.7507–2 to 301.7507–11, inclusive:

(1) The term "bank", unless otherwise indicated by the context, means any national bank, or bank or trust company organized under State law, within the scope of section 7507.

(2) The terms "statute of limitations" and "limitations" mean all applicable provisions of law (including section 7507) which impose, change, or affect the limitations, conditions, or requirements relative to the allowance of refunds and abatements or the assessment or collection of tax, as the case may be.

(3) The term "segregated assets" includes transferred or trusteed assets, or assets set aside or earmarked, to all or a portion of which, or the proceeds of which, the depositors are absolutely or conditionally entitled.

§ 301.7507–2 Scope of section generally.

(a) *Purpose.* Section 7507 is intended to assist depositors of a bank which had ceased to do business by reason of insolvency to recover their deposits, by prohibiting collection of taxes of the bank which would diminish the assets necessary for payment of its depositors and also assist depositors of banks which are in financial difficulties but which, in certain conditions, continue in business.

(b) *Requisites of application.* In order that section 7507 shall operate in a case where the bank continues business it is necessary that the depositors shall agree to accept, in lieu of all or a part of their deposit claims as such, claims against segregated assets, or a lien upon subsequent earnings of the bank, or both. When such an agreement exists, no tax diminishing such assets or earnings, or both, otherwise available and necessary for payment of depositors, may be collected therefrom. If, under such an agreement, the depositors have the right also to look to the unsegregated assets of the bank for recovery, in whole or in part, the unsegregated assets are likewise, until they exceed the amount of the depositors' claims chargeable thereto, unavailable for tax collection. Any tax of such a bank, or part of any tax, which is once uncollectible under section 7507, cannot thereafter be collected except from any residue of segregated assets remaining after claims of depositors against such assets have been paid.

(c) *Interest.* For the purposes of section 7507, depositors' claims include bona fide interest, either on the deposits as such, or on the claims accepted in lieu of deposits as such.

(d) *Limitations on immunity.* Section 7507 is not primarily intended for the relief of banks as such. It does not prevent tax collection, from assets not necessary, or not available, for payment of depositors, from a bank within section 7507 (a), at any time within the statute of limitations. In other words, the immunity of such a bank is not complete, but ceases whenever, within the statutory period for collection, it becomes possible to make collection without diminishing assets necessary for payment of depositors. In the case of a bank within section 7507 (b), any immunity to which the bank is entitled is absolute except as to segregated assets. Any tax coming within such immunity may never be collected. With respect to segregated assets, such a bank is subject to the same rule as a bank within section 7507 (a), that is to say, after claims of depositors against segregated assets have been paid, any surplus is subject, within the statute of limitations, to collection of any tax, due at any time, the collection of which was suspended by the section. The section is not for the relief of creditors other than depositors, although it may incidentally operate for

their benefit. See § 301.7507–4 and paragraph (b) of § 301.7507–9.

§ 301.7507–3 Segregated or transferred assets.

(a) *In general.* In a case involving segregated or transferred assets, it is not necessary, for application of section 7507, that the assets shall technically constitute a trust fund. It is sufficient that segregated assets be definitely separated from other assets of the bank and that transferred assets be definitely separated both from other assets of the bank and from other assets held or owned by the trustee or agent to whom assets of the bank have been transferred; that the bank be wholly or partially released from liability for repayment of deposits as such; and that the depositors have claims against the separated assets. Any excess of separated assets over the amount necessary for payment of such depositors will be available for tax collection after full payment of depositors' claims under the agreement against such assets. But see paragraph (a) of § 301.7507–9.

(b) *Corporate transferees.* Where the segregated assets are transferred to a separate corporate trustee or corporate agent, the assets and earnings therefrom are within the protection of the section, until full payment of depositors' claims against such assets and earnings, no matter by whom the stock of such corporation is held, and no matter whether the assets be liquidated or operated or held for benefit of the depositors.

§ 301.7507–4 Unsegregated assets.

(a) *Depositors' claims against assets.* (1) Claims of depositors, to the extent that they are to be satisfied out of segregated assets, will not be considered in determining the availability of unsegregated assets for tax collection. If depositors have agreed to accept payment out of segregated assets only, collection of tax from unsegregated assets will not diminish the assets available and necessary for payment of the depositors' claims. Thus, it may be possible to collect taxes from the unsegregated assets of a bank although the segregated assets are immune under the section.

(2) If the unsegregated assets of the bank are subject to any portion of the depositors' claims, such unsegregated assets will be within the immunity of the section only to the extent necessary to satisfy the claims to which such assets are subject. Taxes will still be collectible from the unsegregated assets to the extent of the amount by which the total value of such assets exceeds the liability to depositors to be satisfied therefrom. Therefore, if, for example, in the case of a bank having a tax liability, not previously immune under the section, of $50,000, the deposit claims against the bank are in the amount of $75,000, and the assets available for satisfaction of deposit claims amount to $100,000, the $50,000 tax is collectible to the extent of the $25,000 excess of assets over deposit claims. Collection is not to be postponed until the full amount of the tax is collectible.

(b) *Depositors' claims against earnings.* Even though under a bona fide agreement a bank has been released from depositors' claims as to unsegregated assets, if all or a portion of its earnings are subject to depositors' claims, all assets the earnings from which, in whole or part, are charged with the payment of depositors' claims, will be immune from tax collection. But see paragraph (a) of § 301.7507–5.

§ 301.7507–5 Earnings.

(a) *Availability for tax collection.* Earnings of a bank within section 7507(b), whether from segregated or unsegregated assets, which are necessary for, applicable to, and actually used for, payment of depositors' claims under an agreement, are within the immunity of the section. If only a portion or percentage of income from segregated or unsegregated assets is available and necessary for payment of depositors' claims, the remaining income is available for tax collection. Earnings of the bank's first fiscal year ending after the making of the agreement not applicable to payment of depositors will be assumed to be applicable for collection of any tax due prior or subsequent to execution of the agreement. Earnings of subsequent fiscal periods from unsegregated assets not applicable to depositors' claims will be assumed to be applicable to payment of taxes as to which immunity under the section has not previously attached. Earnings from segregated assets are available for collection of tax, whether previously uncollectible under the section or not, after depositors' claims against such assets have been paid in full. See paragraph (a) of § 301.7507–3 and paragraph (a) of § 301.7507–9.

(b) *Tax computation.* The fact that earnings of a given year may be wholly or partly unavailable under section 7507 for collection of taxes does not exempt the income for that year, or any part thereof, from tax liability. The section affects collectibility only, and is not concerned with taxability. Accordingly, the taxpayer's income tax return shall correctly compute the tax liability, even though in the opinion of the taxpayer it is immune from tax collection under the section. The tax shall be determined with respect to the entire gross income and not merely with respect to the portion of the earnings out of which tax may be collected. As to establishment of immunity from tax collection see § 301.7507–7.

Example. (1) An agreement, executed in the year 1954 between a bank and its depositors, provides (i) that certain assets are to be segregated for the benefit of the depositors who have waived (as claims against unsegregated assets of the bank) a percentage of the deposits; (ii) that 40 percent of the bank's net earnings, for years beginning with 1954, from unsegregated assets, shall be paid to the depositors until the portion of their claims waived with respect to unsegregated assets of the bank has been paid; and (iii) that the unsegregated assets shall not be subject to depositors' claims. The net income of the bank for the calendar year 1954 is $10,000, $4,000 produced by the segregated, and $6,000 produced by the unsegregated assets. Such amount shall be considered the net earnings for the purpose of section 7507 in computing the portion of the earnings to be paid to depositors. The bank has an outstanding tax liability for prior years of $7,000. The income tax liability of the bank for 1954 is 30 percent of $10,000, or $3,000, making a total outstanding tax liability of $10,000. The portion of the earnings of the bank for 1954 remaining after provision for depositors is $3,600 ($6,000 less 40 percent thereof, or $2,400). It will be assumed that of the total outstanding tax liability of $10,000, $3,600 may be assessed and collected, leaving $6,400 to be collected from any excess of the segregated assets after claims of depositors against such segregated assets have been paid in full. No part of the $6,400 immune from collection from 1954 earnings may be collected thereafter from unsegregated assets of the bank or earnings therefrom, so that except for any possible surplus of the segregated assets the $6,400 is uncollectible.

(2) In the year 1955, the earnings are again $10,000, $4,000 from segregated and $6,000 from unsegregated assets, as in 1954. However, the return filed shows income of $5,000 and a tax liability of $1,500. An investigation shows the true income to be $10,000, on which the tax is $3,000. The full $3,000 will be assumed to be collectible. The $600 difference between $3,600 (the excess of earnings from unsegregated assets over the amount going to the depositors), and the $3,000 tax for 1955, is not available for collection of the tax for prior years, which became immune as described above, but may be available for collection of tax for subsequent years.

(c) No significance attaches to the selection of the years 1954 and 1955 in the example set forth in paragraph (b) of this section. The rules indicated by the example are equally applicable to subsequent or prior years not excluded by limitations.

§ 301.7507–6 Abatement and refund.

(a) An assessment or collection, no matter when made, if contrary to section 7507, is subject to abatement or refund within the applicable statutory period of limitations.

(b) Collection from a bank within section 7507 (b) which diminishes assets necessary for payment of depositors, if made prior to agreement with depositors, is not contrary to the section, and affords no ground for refund.

(c) Any abatement or refund is subject to existing statutory periods of limitation, which periods are not suspended or extended by section 7507. In order to secure a refund of any taxes paid for any taxable year during the period of immunity the bank must file claim therefor.

§ 301.7507–7 Establishment of immunity.

(a) The mere allegation of insolvency, or that depositors have claims against segregated or other assets or earnings, will not of itself secure immunity from tax collection. It must be affirmatively established to the satisfaction of the district director that collection of tax will be contrary to section 7507. See also § 301.7507–8.

(b) Any claim, by a bank, of immunity under section 7507 (b), shall be supported by a statement, under oath or affirmation, which shall show: (1) The total of depositors' claims outstanding, and (2) separately and in detail, the amount of each of the following, and the amount of depositors' claims properly chargeable

against each: (i) Segregated or transferred assets; (ii) unsegregated assets; (iii) estimated future average annual earnings and profits; (iv) amount collectible from shareholders; and (v) any other resources available for payment of depositors' claims. The detail shall show the full amount of depositors' claims chargeable against each of the items in subdivisions (i) to (v), inclusive, of this subparagraph even though part or all of the amount chargeable against a particular item is also chargeable against some other item or items. There shall also be filed a copy of any agreement between the bank and its depositors, and any other agreement or document bearing on the claim of immunity. The statement shall show the basis, as "book", "market", etc., of valuation of the assets.

§ 301.7507–8 Procedure during immunity.

(a) *Statements to be filed.* As long as complete or partial immunity is claimed, a bank within section 7507 (b) shall file with each income tax return a statement as required by § 301.7507–7, in duplicate, and shall also file such additional statements as the district director may require. Whether or not additional statements shall be required, and the frequency thereof, will depend on the circumstances, including the financial status and apparent prospects of the bank, and the time which is available for assessment and collection. If a copy of an agreement or document has once been filed, a copy of the same agreement or document need not again be filed with a subsequent statement, if it is shown by the subsequent statement, when and where and with what return the copy was filed. In case of amendment a copy of the amendment must be filed with the return for the taxable year in which the amendment is made.

(b) *Failure to file.* Failure of a bank to file any required statement will be treated as indicating that the bank is not entitled to immunity.

§ 301.7507–9 Termination of immunity.

(a) *In general.* (1) In the case of a bank within section 7507 (a), immunity will end whenever, and to the extent that, taxes may be assessed and collected, within the applicable limitation periods as extended by section 7507, without diminishing the assets available and necessary for payment of depositors. Immunity of a bank within section 7507 (b) is terminated, as to segregated assets, whenever claims of depositors against such assets have been paid in full. See § 301.7507–3. As to segregated assets, the termination of immunity is complete, and any balance remaining after payment of depositors is available, within statutory limitations, for collection of tax due at any time. However, taxes of the bank will be collectible from segregated assets only to the extent that the bank has a legal or equitable interest therein. Assets as to which there has been a complete conveyance for benefit of depositors, and the bank has bona fide been divested of all legal and equitable interest, are not available for collection of the bank's tax liability.

(2) As to unsegregated assets of a bank within section 7507 (b), immunity terminates only as to taxes thereafter becoming due. When taxes are once immune from collection, the immunity as to unsegregated assets is absolute. But see paragraph (a) of § 301.7507–4.

(b) *General creditors.* While the immunity from tax collection is for protection of depositors, and not for benefit of general creditors, in some cases the immunity will not end until the assets are sufficient to cover indebtedness of creditors generally. This situation will exist where under applicable law the claims of general creditors are on a parity with those of depositors, so that to pay depositors in full it is necessary to pay all creditors in full.

(c) *Shareholder liability.* In determining the sufficiency of the assets to satisfy the depositors' claims, shareholders' liability to the extent collectible shall be treated as available assets. See § 301.7507–7.

(d) *Deposit insurance.* Deposit insurance payable to depositors shall not be treated as an asset of the bank and shall be disregarded in determining the sufficiency of the assets to meet the claims of depositors.

(e) *Notice by bank.* A bank within section 7507 (b), upon termination of immunity with respect to (1) earnings, (2) segregated or transferred assets, or (3) unsegregated assets, shall immediately notify the district director for the internal revenue district in which the taxpayer's returns were filed of such termination of immunity. See paragraph (b) of § 301.7507–8.

(f) *Payment by bank.* As immunity terminates with respect to any assets, it will be the duty of the bank, without notice from the district director, to make payment of taxes collectible from such assets.

§ 301.7507–10 Collection of tax after termination of immunity.

If, in the case of a bank within section 7507 (b), segregated assets (including earnings therefrom), in excess of those necessary for payment of outstanding deposits become available, such excess of segregated assets shall be applied toward satisfaction of accumulated outstanding taxes previously immune under the section, and not barred by the statute of limitations. But see § 301.7507–3. Where sufficient segregated or unsegregated assets are available, statutory interest shall be collected with the tax. When unsegregated assets or earnings therefrom previously immune become available for tax collection, they will be available only for collection of taxes (including interest and other additions) becoming due after immunity ceases. See the example in paragraph (b) of § 301.7507–5.

§ 301.7507–11 Exception of employment taxes.

The immunity granted by section 7507 does not apply to taxes imposed by chapter 21 or chapter 23 of the Code.

§ 301.7508 Statutory provisions; time for performing certain acts postponed by reason of war.

SEC. 7508. *Time for performing certain acts postponed by reason of war*—(a) *Time to be disregarded.* In the case of an individual serving in the Armed Forces of the United States, or serving in support of such Armed Forces, in an area designated by the President of the United States by Executive order as a "combat zone" for purposes of section 112, at any time during the period designated by the President by Executive order as the period of combatant activities in such zone for purposes of such section, or hospitalized outside the States of the Union and the District of Columbia as a result of injury received while serving in such an area during such time, the period of service in such area, plus the period of continuous hospitalization outside the States of the Union and the District of Columbia attributable to such injury, and the next 180 days thereafter, shall be disregarded in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such individual—

(1) Whether any of the following acts was performed within the time prescribed therefor:

(A) Filing any return of income, estate, or gift tax (except income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby);

(B) Payment of any income, estate, or gift tax (except income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby) or any installment thereof or of any other liability to the United States in respect thereof;

(C) Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;

(D) Allowance of a credit or refund of any tax;

(E) Filing a claim for credit or refund of any tax;

(F) Bringing suit upon any such claim for credit or refund;

(G) Assessment of any tax;

(H) Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;

(I) Collection, by the Secretary or his delegate, by levy or otherwise, of the amount of any liability in respect of any tax,

(J) Bringing suit by the United States, or any officer on its behalf, in respect of any liability in respect of any tax; and

(K) Any other act required or permitted under the internal revenue laws specified in regulations prescribed under this section by the Secretary or his delegate;

(2) The amount of any credit or refund (including interest).

(b) *Exceptions*—(1) *Tax in jeopardy; bankruptcy and receiverships; and transferred assets.* Notwithstanding the provisions of subsection (a), any action or proceeding authorized by section 6851 (regardless of the taxable year for which the tax arose), chapter 70, or 71, as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun, or prosecuted. In any other case in which the Secretary or his delegate determines that collection of the amount of any assessment would be jeopardized by delay, the provisions of subsection (a) shall not operate to stay collection of such amount by levy or otherwise as authorized by law. There shall be excluded from any amount assessed or collected pursuant to this paragraph the amount of interest, penalty, additional amount, and addition to the tax, if any, in respect of the period disregarded under subsection (a). In any case to which this paragraph relates, if the Secretary or his delegate is required to give any notice to or make any demand upon any person, such requirement shall be deemed to be satisfied if the notice or demand is prepared and signed, in any case in which the address of

such person last known to the Secretary or his delegate is in an area for which United States post offices under instructions of the Postmaster General are not, by reason of the combatant activities, accepting mail for delivery at the time the notice or demand is signed. In such case the notice or demand shall be deemed to have been given or made upon the date it is signed.

(2) *Action taken before ascertainment of right to benefits.* The assessment or collection of any internal revenue tax or of any liability to the United States in respect of any internal revenue tax, or any action or proceeding by or on behalf of the United States in connection therewith, may be made, taken, begun, or prosecuted in accordance with law, without regard to the provisions of subsection (a), unless prior to such assessment, collection, action, or proceeding it is ascertained that the person concerned is entitled to the benefits of subsection (a).

§ 301.7509 Statutory provisions; expenditures incurred by the Post Office Department.

SEC. 7509. *Expenditures incurred by the Post Office Department.* The Postmaster General or his delegate shall at least once a month transfer to the Treasury of the United States, together with the receipts required to be deposited under section 6803 (a), a statement of the additional expenditures in the District of Columbia and elsewhere incurred by the Post Office Department in performing the duties, if any, imposed upon such Department with respect to chapter 21, relating to the tax under the Federal Insurance Contributions Act, and the Secretary or his delegate shall be authorized and directed to advance from time to time to the credit of the Post Office Department, from appropriations made for the collection of the taxes imposed by chapter 21, such sums as may be required for such additional expenditures incurred by the Post Office Department.

§ 301.7510 Statutory provisions; exemption from tax of domestic goods purchased for the United States.

SEC. 7510. *Exemption from tax of domestic goods purchased for the United States.* The privilege existing by provision of law on December 1, 1873, or thereafter of purchasing supplies of goods imported from foreign countries for the use of the United States, duty free, shall be extended, under such regulations as the Secretary or his delegate may prescribe, to all articles of domestic production which are subject to tax by the provisions of this title.

§ 301.7510–1 Exemption from tax of domestic goods purchased for the United States.

For any regulations under section 7510, see the applicable regulations with respect to the various taxes.

§ 301.7511 Statutory provisions; exemption of consular officers and employees of foreign states from payment of internal revenue taxes on imported articles.

SEC. 7511. *Exemption of consular officers and employees of foreign states from payment of internal revenue taxes on imported articles.*—(a) *Rule of exemption.* No internal revenue tax shall be imposed with respect to articles imported by a consular officer of a foreign state or by an employee of a consulate of a foreign state, whether such articles accompany the officer or employee to his post in the United States, its insular possessions, or the Panama Canal Zone, or are imported by him at any time during the exercise of his functions therein, if—

(1) such officer or employee is a national of the state appointing him and not engaged in any profession, business, or trade within the territory specified in this subsection;

(2) the articles are imported by the officer or employee for his personal or official use; and

(3) the foreign state grants an equivalent exemption to corresponding officers or employees of the Government of the United States stationed in such foreign state.

(b) *Certificate by Secretary of State.* The Secretary of State shall certify to the Secretary of the Treasury the names of the foreign states which grant an equivalent exemption to the consular officers or employees of the Government of the United States stationed in such foreign states.

§ 301.7512 Statutory provisions; separate accounting for certain collected taxes, etc.

SEC. 7512. *Separate accounting for certain collected taxes, etc.*—(a) *General rule.* Whenever any person who is required to collect, account for, and pay over any tax imposed by subtitle C or by chapter 33—

(1) At the time and in the manner prescribed by law or regulations (A) fails to collect, truthfully account for, or pay over such tax, or (B) fails to make deposits, payments, or returns of such tax, and

(2) Is notified, by notice delivered in hand to such person, of any such failure,

then all the requirements of subsection (b) shall be complied with. In the case of a corporation, partnership, or trust, notice delivered in hand to an officer, partner, or trustee, shall, for purposes of this section, be deemed to be notice delivered in hand to such corporation, partnership, or trust and to all officers, partners, trustees, and employees thereof.

(b) *Requirements.* Any person who is required to collect, account for, and pay over any tax imposed by subtitle C or by chapter 33, if notice has been delivered to such person in accordance with subsection (a), shall collect the taxes imposed by subtitle C or chapter 33 which become collectible after delivery of such notice, shall (not later than the end of the second banking day after any amount of such taxes is collected) deposit such amount in a separate account in a bank (as defined in section 581), and shall keep the amount of such taxes in such account until payment over to the United States. Any such account shall be designated as a special fund in trust for the United States, payable to the United States by such person as trustee.

(c) *Relief from further compliance with subsection (b).* Whenever the Secretary or his delegate is satisfied, with respect to any notification made under subsection (a), that all requirements of law and regulations with respect to the taxes imposed by subtitle C or chapter 33, as the case may be, will hereafter be complied with, he may cancel such notification. Such cancellation shall take effect at such time as is specified in the notice of such cancellation.

[Sec. 7512 as added by sec. 1, Act of Feb. 11, 1958 (Pub. Law 85–321, 72 Stat. 5)]

§ 301.7512–1 Separate accounting for certain collected taxes.

(a) *Scope.* The provisions of section 7512 and this section apply to—

(1) The following taxes imposed by subtitle C of the Code in respect of wages or compensation paid after February 11, 1958, for pay periods beginning after such date:

(i) The employee tax imposed by section 3101 of chapter 21 (Federal Insurance Contributions Act),

(ii) The employee tax imposed by section 3201 of chapter 22 (Railroad Retirement Tax Act), and

(iii) The income tax required to be withheld on wages by section 3402 of chapter 24 (Collection of Income Tax at Source on Wages); and

(2) The following taxes imposed by chapter 33 of the Code in respect of taxable payments made, except as otherwise specifically provided in this subparagraph, after February 11, 1958:

(i) The taxes imposed by section 4231 (1), (2), and (3) on amounts paid for admissions, and the tax imposed by section 4231(6) on amounts paid for admission, refreshment, service, or merchandise, at any roof garden, cabaret, or other similar place, to the extent that such tax on amounts paid on or after January 1, 1959, is required to be collected by the proprietor of the roof garden, cabaret, or similar place from a concessionaire in such establishment,

(ii) The taxes imposed by section 4241 on amounts paid as club dues,

(iii) The taxes imposed by section 4251 on amounts paid for communications services or facilities,

(iv) The tax imposed by section 4261 on amounts paid for transportation of persons and the tax imposed by section 4271 on amounts paid before August 1, 1958, for the transportation of property, and

(v) The tax imposed by section 4286 on amounts collected for the use of safe deposit boxes.

(b) *Requirement.* If the district director determines that any person required to collect, account for, and pay over any tax described in paragraph (a) of this section has, at the time and in the manner prescribed by law or regulations, failed to collect, truthfully account for, or pay over any such tax, or make deposits, payments, or returns of any such tax, such person, if notified to do so by the district director in accordance with section 7512 and paragraph (d) of this section, shall—

(1) Collect, at the times and in the manner provided by the law and the regulations in respect of the various taxes described in paragraph (a) of this section, all of the taxes described in such paragraph which become collectible by him after receipt of such notice;

(2) Deposit the taxes so collected, not later than the end of the second banking day after collection, with a bank, as defined in section 581, in a separate account established in accordance with paragraph (c) of this section; and

(3) Keep in such account the taxes so deposited until payment thereof is made to the United States as required by the law and the regulations in respect of such taxes.

The separate accounting requirements contained in subparagraphs (1), (2), and (3) of this paragraph are applicable, in the case of the taxes described in paragraph (a) (1) of this section, to taxes with respect to wages or compensation paid after receipt of the notice from the district director, irrespective of whether such wages or compensation was earned prior to or after receipt of the notice; and, in the case of the taxes described

in paragraph (a) (2) of this section, to taxes with respect to taxable payments made after receipt of the notice from the district director, irrespective of whether the transactions with respect to which such payments were made occurred prior to or after receipt of the notice.

(c) *Trust fund account.* The separate bank account referred to in paragraph (b) of this section shall be established under the designation, "(Name of person required to establish account), Trustee, Special Fund in Trust for U. S. under sec. 7512, I. R. C.". The taxes deposited in such account shall constitute a fund in trust for the United States payable only to the Internal Revenue Service on demand by the trustee.

(d) *Notice.* Notice to any person requiring his compliance with the provisions of section 7512 (b) and this section shall be in writing and shall be delivered in hand to such person by an internal revenue officer or employee. In the case of a trade or business carried on other than as a sole proprietorship, such as a corporation, partnership, or trust, notice delivered in hand to an officer, partner, or trustee shall be deemed to be notice delivered in hand to such corporation, partnership, or trust and to all officers, partners, trustees, and employees thereof.

(e) *Cancellation of notice.* The district director may relieve a person to whom notice requiring separate accounting has been given pursuant to section 7512 and this section from further compliance with such separate accounting requirements whenever he is satisfied that such person will comply with all requirements of the Code and the regulations applicable, in respect of the taxes to which the notice relates, in the case of persons not required to comply with the provisions of section 7512 (b). Notice of cancellation of the requirement for separate accounting shall be made in writing and shall take effect at such time as is specified in the notice of cancellation.

(f) *Penalties.* For criminal penalty for failure to comply with any provision of section 7512, see section 7215. For criminal penalties for failure to file return, supply information, or pay tax, for failure to collect or pay over tax, and for attempt to evade or defeat tax, see sections 7203, 7202, and 7201, respectively.

§ 301.7513 Statutory provisions; reproduction of returns and other documents.

SEC. 7513. *Reproduction of returns and other documents*—(a) *In general.* The Secretary or his delegate is authorized to have any Federal agency or any person process films or other photoimpressions of any return, document, or other matter, and make reproductions from films or photoimpressions of any return, document, or other matter.

(b) *Regulations.* The Secretary or his delegate shall prescribe regulations which shall provide such safeguards as in the opinion of the Secretary or his delegate are necessary or appropriate to protect the film, photoimpressions, and reproductions made therefrom, against any unauthorized use, and to protect the information contained therein against any unauthorized disclosure.

(c) *Use of reproductions.* Any reproduction of any return, document, or other matter made in accordance with this section shall have the same legal status as the original; and any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding, as if it were the original, whether or not the original is in existence.

(d) *Penalty.* For penalty for violation of regulations for safeguarding against unauthorized use of any film or photoimpression, or reproduction made therefrom, and against unauthorized disclosure of information contained therein, see section 7213.

[Sec. 7513 as added by sec. 90(a), Technical Amendments Act 1958 (72 Stat. 1666)]

§ 301.7513–1 Reproduction of returns and other documents.

(a) *In general.* The Commissioner, district directors, and other authorized officers and employees of the Internal Revenue Service may contract with any Federal agency or any person to have such agency or person process films and other photoimpressions of any return, statement, document, or of any card, record, or other matter, and make reproductions from such films and photoimpressions.

(b) *Safeguards*—(1) *By private contractor.* Any person entering into a contract with the Internal Revenue Service for the performance of any of the services described in paragraph (a) of this section shall agree to comply, and to assume responsibility for compliance by his employees, with the following requirements:

(i) The films or photoimpressions, and reproductions made therefrom, shall be used only for the purpose of carrying out the provisions of the contract, and information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract;

(ii) All the services shall be performed under the supervision of the person with whom the contract is made or his responsible employees;

(iii) All material received for processing and all processed and reproduced material shall be kept in a locked and fireproof compartment in a secure place when not being worked upon;

(iv) All spoilage of reproductions made from the film or photoimpressions supplied to the contractor shall be destroyed, and a statement under the penalties of perjury shall be submitted to the Internal Revenue Service that such destruction has been accomplished; and

(v) All film, photoimpressions, and reproductions made therefrom, shall be transmitted to the Internal Revenue Service by personal delivery, first-class mail, parcel post, or express.

(2) *By Federal agency.* Any Federal agency entering into a contract with the Internal Revenue Service for the performance of any services described in paragraph (a) of this section, shall treat as confidential all material processed or reproduced pursuant to such contract.

(3) *Inspection.* The Internal Revenue Service shall have the right to send its officers and employees into the offices and plants of Federal agencies and other contractors for inspection of the facilities and operations provided for the performance of any work contracted or to be contracted for under this section.

(4) *Criminal sanctions.* For penalty provisions relating to the unauthorized use and disclosure of information in violation of the provisions of this section, see section 7213(c).

(c) *Legal status of reproductions.* Section 7513 provides that any reproduction made in accordance with such section of any return, document, or other matter shall have the same legal status as the original and requires that any such reproduction shall, if properly authenticated, be admissible in evidence in any judicial or administrative proceeding, as if it were the original, whether or not the original is in existence.

§ 301.7514 Statutory provisions; authority to prescribe or modify seals.

SEC. 7514. *Authority to prescribe or modify seals.* The Secretary or his delegate is authorized to prescribe or modify seals of office for the district directors of internal revenue and other officers or employees of the Treasury Department to whom any of the functions of the Secretary shall have been or may be delegated. Each seal so prescribed shall contain such device as the Secretary or his delegate may select. Each seal shall remain in the custody of any officer or employee whom the Secretary or his delegate may designate, and, in accordance with the regulations approved by the Secretary or his delegate, may be affixed in lieu of the seal of the Treasury Department to any certificate or attestation (except for material to be published in the FEDERAL REGISTER) that may be required of such officer or employee. Judicial notice shall be taken of any seal prescribed in accordance with this authority, a facsimile of which has been published in the FEDERAL REGISTER together with the regulations prescribing such seal and the affixation thereof.

[Sec. 7514 as added by sec. 91, Technical Amendments Act 1958 (72 Stat. 1667)]

§ 301.7514–1 Seals of office.

(a) *Establishment of seals*—(1) *Commissioner of Internal Revenue.* There is hereby established in and for the office of the Commissioner of Internal Revenue an official seal. The seal is described as follows, and illustrated below: A circle within which shall appear that part of the seal of the Treasury Department represented by the shield and side wreaths. Exterior to this circle and within a circumscribed circle in the form of a rope shall appear in the upper part the words "OFFICE OF" and in the lower part the words "COMMISSIONER OF INTERNAL REVENUE."

(2) *District directors of internal revenue.* (i) There is hereby established an official seal in and for each of the offices of district director of internal revenue listed in subdivision (ii) of this subparagraph. The seal is described as follows, and one such seal is illustrated below: A circle within which shall appear that part of the seal of the Treasury Department represented by the shield and side wreaths. Exterior to this circle and within a circumscribed circle in the form of a rope shall appear in the upper part the words "DISTRICT DIRECTOR OF INTERNAL REVENUE" and in the lower part the location of the office for which the seal is established.

(ii) The offices of district director of internal revenue for which seals are established in subdivision (i) of this subparagraph are as follows:

District Director of Internal Revenue, Birmingham, Ala.
District Director of Internal Revenue, Phoenix, Ariz.
District Director of Internal Revenue, Little Rock, Ark.
District Director of Internal Revenue, Los Angeles, Calif.
District Director of Internal Revenue, San Francisco, Calif.
District Director of Internal Revenue, Denver, Colo.
District Director of Internal Revenue, Hartford, Conn.
District Director of Internal Revenue, Wilmington, Del.
District Director of Internal Revenue, Jacksonville, Fla.
District Director of Internal Revenue, Atlanta, Ga.
District Director of Internal Revenue, Honolulu, Hawaii.
District Director of Internal Revenue, Boise, Idaho.
District Director of Internal Revenue, Chicago, Ill.
District Director of Internal Revenue, Springfield, Ill.
District Director of Internal Revenue, Indianapolis, Ind.
District Director of Internal Revenue, Des Moines, Iowa.
District Director of Internal Revenue, Wichita, Kans.
District Director of Internal Revenue, Louisville, Ky.
District Director of Internal Revenue, New Orleans, La.
District Director of Internal Revenue, Augusta, Maine.
District Director of Internal Revenue, Baltimore, Md.
District Director of Internal Revenue, Boston, Mass.
District Director of Internal Revenue, Detroit, Mich.
District Director of Internal Revenue, St. Paul, Minn.
District Director of Internal Revenue, Jackson, Miss.
District Director of Internal Revenue, Kansas City, Mo.
District Director of Internal Revenue, St. Louis, Mo.
District Director of Internal Revenue, Helena, Mont.
District Director of Internal Revenue, Omaha, Nebr.
District Director of Internal Revenue, Reno, Nev.
District Director of Internal Revenue, Portsmouth, N.H.
District Director of Internal Revenue, Camden, N.J.
District Director of Internal Revenue, Newark, N.J.
District Director of Internal Revenue, Albuquerque, N. Mex.
District Director of Internal Revenue, Albany, N.Y.
District Director of Internal Revenue, Brooklyn, N.Y.
District Director of Internal Revenue, Buffalo, N.Y.
District Director of Internal Revenue, Manhattan, New York, N.Y.
District Director of Internal Revenue, Syracuse, N.Y.
District Director of Internal Revenue, Greensboro, N.C.
District Director of Internal Revenue, Fargo, N. Dak.
District Director of Internal Revenue, Cincinnati, Ohio.
District Director of Internal Revenue, Cleveland, Ohio.
District Director of Internal Revenue, Oklahoma City, Okla.
District Director of Internal Revenue, Portland, Oreg.
District Director of Internal Revenue, Philadelphia, Pa.
District Director of Internal Revenue, Pittsburgh, Pa.
District Director of Internal Revenue, Scranton, Pa.
District Director of Internal Revenue, Providence, R.I.
District Director of Internal Revenue, Columbia, S.C.
District Director of Internal Revenue, Aberdeen, S. Dak.
District Director of Internal Revenue, Nashville, Tenn.
District Director of Internal Revenue, Austin, Tex.
District Director of Internal Revenue, Dallas, Tex.
District Director of Internal Revenue, Salt Lake City, Utah.
District Director of Internal Revenue, Richmond, Va.
District Director of Internal Revenue, Burlington, Vt.
District Director of Internal Revenue, Seattle, Wash.
District Director of Internal Revenue, Parkersburg, W. Va.
District Director of Internal Revenue, Milwaukee, Wis.
District Director of Internal Revenue, Cheyenne, Wyo.

(3) *Director of International Operations.* There is hereby established in and for the office of the Director of International Operations an official seal. The seal is described as follows, and illustrated below: A circle within which shall appear that part of the seal of the Treasury Department represented by the shield and side wreaths. Exterior to this circle and within a circumscribed circle in the form of a rope shall appear in the upper part the words "DIRECTOR OF INTERNATIONAL OPERATIONS" and in the lower part "Washington, D.C. Internal Revenue Service".

(b) *Custody of seal.* Each seal established by this section shall be in the custody of the officer for whose office such seal is established.

(c) *Use of official seal.* Each seal of office established by this section may be affixed in lieu of the seal of the Treasury Department to any certificate or attestation required to be made by the officer for whose office such seal is established in authentication of originals and copies of books, records, papers, writings, and documents of the Internal Revenue Service in the custody of such officer, for all purposes, including the purposes of 28 U.S.C. 1733(b), Rule 44 of the Federal Rules of Civil Procedure, and Rule 27 of the Federal Rules of Criminal Procedure, except that—

(1) No such seal shall be affixed to material to be published in the FEDERAL REGISTER, and

(2) The seal of the office of a district director of internal revenue or the Director of International Operations shall not be affixed to the certification of copies of books, records, papers, writings, or documents in his custody in any case in which, pursuant to Executive order, Treasury decision, or Part 601 of this chapter (Statement of Procedural Rules), such copies may be furnished to applicants only by the Commissioner.

(d) *Judicial notice.* In accordance with the provisions of section 7514, judicial notice shall be taken of the seals established under this section.

Discovery of Liability and Enforcement of Title

EXAMINATION AND INSPECTION

§ 301.7601 Statutory provisions; canvass of districts for taxable persons and objects.

SEC. 7601. *Canvass of districts for taxable persons and objects*—(a) *General rule.* The Secretary or his delegate shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

(b) *Penalties.* For penalties applicable to forcible obstruction or hindrance of Treasury officers or employees in the performance of their duties, see section 7212.

§ 301.7601–1 Canvass of districts for taxable persons and objects.

Each district director shall, to the extent he deems it practicable, cause officers or employees under his supervision and control to proceed, from time to time, through his district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed. Each assistant regional commissioner (alcohol and tobacco tax) shall, to the extent he deems it practicable, cause officers or employees under his supervision and control to make similar inquiries in respect of taxes imposed under subtitle E of the Code.

§ 301.7602 Statutory provisions; examination of books and witnesses.

SEC. 7602. *Examination of books and witnesses.* For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary or his delegate may deem proper, to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

§ 301.7602–1 Examination of books and witnesses.

(a) *In general.* For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax (including any interest, additional amount, addition to the tax, or civil penalty) or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, any authorized officer or employee of the Internal Revenue Service may examine any books, papers, records or other data which may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant to such inquiry.

(b) *Summons.* For the purposes described in paragraph (a) of this section the officers and employees of the Internal Revenue Service designated in paragraph (c) of this section are authorized to summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person deemed proper, to appear before a designated officer or employee of the Internal Revenue Service at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. The officers and employees designated in paragraph (c) of this section may designate any other employee of the Internal Revenue Service as the individual before whom a person summoned pursuant to section 6420(e)(2), 6421(f)(2), or 7602 shall appear. Any such other employee, when so designated in a summons, is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records, or other data produced in compliance with the summons. The authority to issue a summons may not be redelegated.

(c) *Persons who may issue summons.* The following officers and employees of the Internal Revenue Service are authorized to issue a summons pursuant to sections 6420(e)(2), 6421(f)(2), and 7602—

(1) Regional commissioners and district directors.

(2) Inspection: Assistant Commissioner; director and assistant directors, Internal Security Division; regional inspectors; and all internal security inspectors.

(3) Alcohol and Tobacco Tax: Assistant regional commissioners.

(4) Intelligence: Director; assistant director; assistant regional commissioners; executive assistants to assistant regional commissioner; chiefs, Review and Conference Staff; reviewer-conferees; chiefs and assistant chiefs of divisions, branches and sections; group supervisors; and special agents of the national, regional and district offices.

(5) International Operations: Director; assistant director; chiefs of divisions, branches, and groups; special agents; internal revenue agents; estate tax examiners; revenue service representatives; and assistant revenue service representatives.

(6) Collection: Chiefs and assistant chiefs of divisions; chiefs and assistant chiefs of the Delinquent Accounts and Returns Branches; group supervisors; and revenue officers.

(7) Audit: Chiefs of divisions and branches; group supervisors; internal revenue agents; and estate tax examiners.

§ 301.7603 Statutory provisions; service of summons.

SEC. 7603. *Service of Summons.* A summons issued under section 6420(e)(2), 6421(f)(2), or 7602 shall be served by the Secretary or his delegate, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

[Sec. 7603 as amended by sec. 4(1), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 91); sec. 208(d)(4), Highway Revenue Act 1956 (70 Stat. 396)]

§ 301.7603–1 Service of summons.

(a) *In general.* A summons issued under section 6420(e)(2), 6421(f)(2), or 7602 shall be served by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode. The certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

(b) *Persons who may serve summons.* The following officers and employees of the Internal Revenue Service are authorized to serve a summons issued under section 6420(e)(2), 6421(f)(2), or 7602—

(1) The officers and employees designated in paragraph (c) of § 301.7602–1, and

(2) Alcohol and Tobacco Tax: Chiefs; aides to chiefs; supervisors in charge; assistant supervisors in charge; investigators; special investigators; and inspectors.

The authority to serve a summons may be redelegated only by the Assistant Commissioner (Inspection), regional commissioners, assistant regional commissioners (alcohol and tobacco tax), district directors, and the Director of International Operations to officers and employees under their jurisdiction.

§ 301.7604 Statutory provisions; enforcement of summons.

SEC. 7604. *Enforcement of summons*—(a) *Jurisdiction of district court.* If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

(b) *Enforcement.* Whenever any person summoned under section 6420(e)(2), 6421(f)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary or his delegate may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

(c) *Cross references*—(1) *Authority to issue orders, processes, and judgments.* For authority of district courts generally to enforce the provisions of this title, see section 7402.

(2) *Penalties.* For penalties applicable to violation of section 6420(e)(2), 6421(f)(2), or 7602, see section 7210.

[Sec. 7604 as amended by sec. 4(1), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 91); sec. 208(d)(4), Highway Revenue Act 1956 (70 Stat. 396)]

§ 301.7604–1 Enforcement of summons.

(a) *In general.* Whenever any person summoned under section 6420(e)(2), 6421(f)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, application may be made to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides or is found for an attachment against him as for a contempt.

(b) *Persons who may apply for an attachment.* The officers and employees of the Internal Revenue Service designated in paragraph (b) of § 301.7603–1 are authorized to apply for an attachment as provided in paragraph (a) of this section. The authority to apply for an attachment for the enforcement of a summons may not be redelegated.

§ 301.7605 Statutory provisions; time and place of examination.

SEC. 7605. *Time and place of examination*—(a) *Time and place.* The time and place of examination pursuant to the provisions of section 6420(e)(2), 6421(f)(2), or 7602 shall be such time and place as may be fixed by the Secretary or his delegate and as are reasonable under the circumstances. In the case of a summons under authority of paragraph (2) of section 7602, or under the corresponding authority of section 6420(e)(2) or 6421(f)(2), the date fixed for appearance before the Secretary or his delegate shall not be less than 10 days from the date of the summons.

(b) *Restrictions on examination of taxpayer.* No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Secretary or his delegate, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

[Sec. 7605 as amended by sec. 4(1), Act of Apr. 2, 1956 (Pub. Law 466, 84th Cong., 70 Stat. 91); sec. 208(d)(4), Highway Revenue Act 1956 (70 Stat. 396)]

§ 301.7605–1 Time and place of examination.

(a) *Time and place.* The time and place of examination pursuant to the provisions of section 6420(e)(2), 6421(f)(2), or 7602 shall be such time and place as may be fixed by an officer or employee of the Internal Revenue Service and as are reasonable under the circumstances. In the case of a summons under authority of section 7602(2) and § 301.7602–1, or under the corresponding authority of section 6420(e)(2) or 6421(f)(2), the date fixed for appearance before an officer or employee of the Service, shall not be less than 10 days from the date of the summons.

(b) *Restrictions on examination of taxpayer.* No taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless an authorized internal revenue officer, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

§ 301.7606 Statutory provisions; entry of premises for examination of taxable objects.

SEC. 7606. *Entry of premises for examination of taxable objects*—(a) *Entry during day.* The Secretary or his delegate may enter, in the daytime, any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects.

(b) *Entry at night.* When such premises are open at night, the Secretary or his delegate may enter them while so open, in the performance of his official duties.

(c) *Penalties.* For penalty for refusal to permit entry or examination, see section 7342.

§ 301.7606–1 Entry of premises for examination of taxable objects.

Any officer or employee of the Internal Revenue Service may, in the performance of his duty, enter in the daytime any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects and also enter at night any such building or place, while open, for a similar purpose. For additional provisions relating to entry of premises in connection with the administration of alcohol taxes, see sections 5146, 5203, and 5275.

§ 301.7607 Statutory provisions; additional authority for Bureau of Narcotics and Bureau of Customs.

SEC. 7607. *Additional authority for Bureau of Narcotics and Bureau of Customs.* The Commissioner, Deputy Commissioner, Assistant to the Commissioner, and agents, of the Bureau of Narcotics of the Department of the Treasury, and officers of the customs (as defined in section 401(*l*) of the Tariff Act of 1930, as amended; 19 U.S.C., sec. 1401(*l*)), may—

(1) Carry firearms, execute and serve search warrants and arrest warrants, and serve subpenas and summonses issued under the authority of the United States, and

(2) Make arrests without warrant for violations of any law of the United States relating to narcotic drugs (as defined in section 4731) or marihuana (as defined in section 4761) where the violation is committed in the presence of the person making the arrest or where such person has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.

[Sec. 7607 as added by sec. 104(a), Narcotic Control Act 1956 (70 Stat. 570)]

§ 301.7608 Statutory provisions; authority of internal revenue enforcement officers.

SEC. 7608. *Authority of internal revenue enforcement officers.* Any investigator, agent, or other internal revenue officer by whatever term designated, whom the Secretary or his delegate charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of subtitle E or of any other law of the United States pertaining to the commodities subject to tax under such subtitle for the enforcement of which the Secretary or his delegate is responsible, may—

(1) Carry firearms;

(2) Execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

(3) In respect to the performance of such duty, make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and

(4) In respect to the performance of such duty, make seizures of property subject to forfeiture to the United States.

[Sec. 7608 as added by sec. 204(14), Excise Tax Technical Changes Act 1958 (72 Stat. 1429)]

§ 301.7608–1 Authority of internal revenue enforcement officers.

Any investigator, agent, or other internal revenue officer by whatever term designated, whom the Commissioner, Assistant Commissioner (Operations), Director, Alcohol and Tobacco Tax Division, regional commissioner, or assistant regional commissioner (alcohol and tobacco tax) charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of subtitle E of the Code or of any other law of the United States pertaining to the commodities subject to tax under such subtitle for the enforcement of which such officers are responsible, may perform the functions provided in section 7608.

§ 301.7609 Statutory provisions; cross references.

SEC. 7609. *Cross references*—(a) *Inspection of books, papers, records, or other data.* For inspection of books, papers, records, or other data in the case of—

(1) Wholesale dealers in oleomargarine, see section 4597.

(2) Wholesale dealers in process or renovated butter or adulterated butter, see section 4815(b).

(3) Opium, opiates, and coca leaves, see section 4702(a), 4705, 4721, 4773.

(4) Marihuana, see sections 4742, 4753(b), and 4773.

(5) Wagering, see section 4423.

(6) Alcohol, tobacco, and firearms taxes, see subtitle E.

(b) *Search warrants.* For provisions relating to—

(1) Searches and seizures, see Rule 41 of the Federal Rules of Criminal Procedure.

(2) Issuance of search warrants with respect to subtitle E, see section 5557.

(3) Search warrants with respect to property used in violation of the internal revenue laws, see section 7302.

[Sec. 7607 as renumbered by sec. 104(a), Narcotic Control Act 1956 (70 Stat. 570); and as renumbered and amended by sec. 204 (14), (15), Excise Tax Technical Changes Act 1958 (72 Stat. 1429, 1430)]

GENERAL POWERS AND DUTIES

§ 301.7621 Statutory provisions; internal revenue districts.

SEC. 7621. *Internal revenue districts*—(a) *Establishment and alteration.* The President shall establish convenient internal revenue districts for the purpose of administering the internal revenue laws. The President may from time to time alter such districts.

(b) *Boundaries.* For the purpose mentioned in subsection (a), the President may subdivide any State, Territory, or the District

of Columbia, or may unite into one district two or more States or a Territory and one or more States.

[Sec. 7621 as amended by sec. 22(c), Alaska Omnibus Act (73 Stat. 146)]

§ 301.7621–1 Internal revenue districts.

For delegation to the Secretary of authority to prescribe internal revenue districts for the purpose of administering the internal revenue laws, see Executive Order No. 10289, dated September 17, 1951 (16 F.R. 9499), as made applicable to the Code by Executive Order No. 10574, dated November 5, 1954 (19 F.R. 7249).

§ 301.7622 Statutory provisions; authority to administer oaths and certify.

SEC. 7622. *Authority to administer oaths and certify*—(a) *Internal revenue personnel.* Every officer or employee of the Treasury Department designated by the Secretary or his delegate for that purpose is authorized to administer such oaths or affirmations and to certify to such papers as may be necessary under the internal revenue laws or regulations made thereunder.

(b) *Others.* Any oath or affirmation required or authorized under any internal revenue law or under any regulations made thereunder may be administered by any person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered. This subsection shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations.

§ 301.7622–1 Authority to administer oaths and certify.

The officers and employees of the Internal Revenue Service designated in paragraph (b) of § 301.7603–1 are authorized to administer such oaths or affirmations and to certify to such papers as may be necessary under the internal revenue laws or regulations issued thereunder, except that the authority to certify shall not be construed as applying to those papers or documents the certification of which is authorized by separate order or directive. The authority to administer oaths and to certify may be redelegated only by the Assistant Commissioner (Inspection), regional commissioners, assistant regional commissioners (alcohol and tobacco tax), assistant regional commissioners (intelligence), district directors, and the Director of International Operations, to officers and employees under their jurisdiction.

§ 301.7623 Statutory provisions; expenses of detection and punishment of frauds.

SEC. 7623. *Expenses of detection and punishment of frauds.* The Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, is authorized to pay such sums, not exceeding in the aggregate the sum appropriated therefor, as he may deem necessary for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws, or conniving at the same, in cases where such expenses are not otherwise provided for by law.

§ 301.7623–1 Rewards for information relating to violations of internal revenue laws.

(a) *In general.* A district director may approve such reward as he deems suitable for information that leads to the detection and punishment of any person guilty of violating any internal revenue law, or conniving at the same. The rewards provided for by section 7623 are limited in their aggregate to the sum appropriated therefor and shall be paid only in cases not otherwise provided for by law.

(b) *Eligibility to file claim for reward*—(1) *In general.* Any person, other than certain present or former federal employees (see subparagraph (2) of this paragraph), who submits, in the manner set forth in paragraph (d) of this section, information relating to the violation of an internal revenue law is eligible to file a claim for reward under section 7623.

(2) *Federal employees.* No person who was an officer or employee of the Department of the Treasury at the time he came into possession of information relating to violations of the internal revenue laws, or at the time he divulged such information, shall be eligible for reward under section 7623 and this section. Any other federal employee, or former federal employee, is eligible to file a claim for reward if the information submitted came to his knowledge other than in the course of his official duties.

(3) *Deceased informants.* A claim for reward may be filed by an executor, administrator, or other legal representative on behalf of a deceased informant if, prior to his death, the informant was eligible to file a claim for such reward under section 7623 and this section. Certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to such a claim for reward on behalf of a deceased informant in order to show the authority of the legal representative to file the claim for reward.

(c) *Amount and payment of reward.* All relevant factors, including the value of the information furnished in relation to the facts developed by the investigation of the violation, shall be taken into account by a district director in determining whether a reward shall be paid, and, if so, the amount thereof. The amount of a reward shall represent what the district director deems to be adequate compensation in the particular case, normally not to exceed ten percent of the additional taxes, penalties, and fines which are recovered as a result of the information. No reward, however, shall be paid with respect to any additional interest that may be collected. Payment of a reward will be made as promptly as the circumstances of the case permit, but generally not until the taxes, penalties, or fines involved have been collected. However, the informant may waive any claim for reward with respect to an uncollected portion of the taxes, penalties, or fines involved, in which case the claim may be immediately processed. No person is authorized under these regulations to make any offer, or promise, or otherwise to bind a district director with respect to the payment of any reward or the amount thereof.

(d) *Submission of information.* Persons desiring to claim rewards under the provisions of section 7623 and this section may submit information relating to violations of the internal revenue laws, in person, to the Office of the Director of the Intelligence Division, Washington 25, D.C., or to the office of a district director, preferably to a representative of the Intelligence Division thereof. Such information may also be submitted in writing to the Commissioner of Internal Revenue, Attention: Director, Intelligence Division, Washington 25, D.C., or to any district director, Attention: Chief, Intelligence Division. If the information is submitted in person, either orally or in writing, the name and official title of the person to whom it is submitted and the date on which it is submitted must be included in the formal claim for reward.

(e) *Anonymity.* No unauthorized person shall be advised of the identity of an informant.

(f) *Filing claim for reward.* An informant who intends to claim a reward under section 7623 should notify the person to whom he submits his information of such intention, and must file a formal claim, signed with his true name, as soon after submission of the information as practicable. If other than the informant's true name was used in furnishing the information, the claimant must include with his claim satisfactory proof of his identity as that of the informant. Claim for reward under the provisions of section 7623 shall be made on Form 211, which may be obtained from the offices of the district directors, or from the Commissioner of Internal Revenue, Washington 25, D.C. A claim for reward should be transmitted to the district director, Attention: Informant's Claim Examiner, or to the Commissioner of Internal Revenue, Attention: Director, Intelligence Division, Washington 25, D.C.

(g) *Claims involving Alcohol and Tobacco Tax Division.* Rewards for information leading to the detection and punishment of persons guilty of violating the internal revenue laws administered by the Alcohol and Tobacco Tax Division shall be handled consistently with the provisions of this section, except that—

(1) Assistant regional commissioners (alcohol and tobacco tax), under the direction and supervision of the regional commissioners, shall perform all functions delegated to district directors by these regulations, and

(2) The Director, Alcohol and Tobacco Tax Division, Washington 25, D.C., shall perform all functions delegated to the Director, Intelligence Division, Washington 25, D.C., by these regulations.

SUPERVISION OF OPERATIONS OF CERTAIN MANUFACTURERS

§ 301.7641 Statutory provisions; supervision of operations of certain manufacturers.

SEC. 7641. *Supervision of operations of certain manufacturers.* Every manufacturer of filled cheese, oleomargarine, opium suitable for smoking purposes, process or renovated butter or adulterated butter, or white phosphorous matches shall conduct his business under such surveillance of officers or em-

ployees of the Treasury Department as the Secretary or his delegate may by regulations require.

§ 301.7641–1 Supervision of operations of certain manufacturers.

For regulations under section 7641, except the provisions thereof relating to the manufacture of opium suitable for smoking purposes, see Subparts E, F, G, and H of Part 45 of this chapter (Miscellaneous Stamp Tax Regulations). For regulations relating to the manufacture of opium suitable for smoking purposes, see 26 CFR (1939) 150 (Narcotics Regulations 3, 3 F.R. 1402) as made applicable to section 7641 by Treasury Decision 6091, approved August 16, 1954 (19 F.R. 5167).

POSSESSIONS

§ 301.7651 Statutory provisions; administration and collection of taxes in possessions.

SEC. 7651. *Administration and collection of taxes in possessions.* Except as otherwise provided in this subchapter and in sections 4705(b), 4735, and 4762 (relating to taxes on narcotic drugs and marihuana), and except as otherwise provided in section 28(a) of the Revised Organic Act of the Virgin Islands and section 30 of the Organic Act of Guam (relating to the covering of the proceeds of certain taxes into the treasuries of the Virgin Islands and Guam, respectively)—

(1) *Applicability of administrative provisions.* All provisions of the laws of the United States applicable to the assessment and collection of any tax imposed by this title or of any other liability arising under this title (including penalties) shall, in respect of such tax or liability, extend to and be applicable in any possession of the United States in the same manner and to the same extent as if such possession were a State, and as if the term "United States" when used in a geographical sense included such possession.

(2) *Tax imposed in possession.* In the case of any tax which is imposed by this title in any possession of the United States—

(A) *Internal revenue collections.* Such tax shall be collected under the direction of the Secretary or his delegate, and shall be paid into the Treasury of the United States as internal revenue collections; and

(B) *Applicable laws.* All provisions of the laws of the United States applicable to the administration, collection, and enforcement of such tax (including penalties) shall, in respect of such tax, extend to and be applicable in such possession of the United States in the same manner and to the same extent as if such possession were a State, and as if the term "United States" when used in a geographical sense included such possession.

(3) *Other laws relating to possessions.* This section shall apply notwithstanding any other provision of law relating to any possession of the United States.

(4) *Canal Zone.* For purposes of this section, the term "possession of the United States" includes the Canal Zone.

(5) *Virgin Islands*—(A) For purposes of this section, the reference in section 28(a) of the Revised Organic Act of the Virgin Islands to "any tax specified in section 3811 of the Internal Revenue Code" shall be deemed to refer to any tax imposed by chapter 2 or by chapter 21.

(B) For purposes of this title, section 28 (a) of the Revised Organic Act of the Virgin Islands shall be effective as if such section had been enacted subsequent to the enactment of this title.

§ 301.7652 Statutory provisions; shipments to the United States.

SEC. 7652. *Shipments to the United States*—(a) *Puerto Rico*—(1) *Rate of tax.* Except as provided in section 5314, articles of merchandise of Puerto Rican manufacture coming into the United States and withdrawn for consumption or sale shall be subject to a tax equal to the internal revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture.

(2) *Payment of tax.* The Secretary or his delegate shall by regulations prescribe the mode and time for payment and collection of the tax described in paragraph (1), including any discretionary method described in section 6302 (b) and (c). Such regulations shall authorize the payment of such tax before shipment from Puerto Rico, and the provisions of section 7651(2)(B) shall be applicable to the payment and collection of such tax in Puerto Rico.

(3) *Deposit of internal revenue collections.* All taxes collected under the internal revenue laws of the United States on articles produced in Puerto Rico and transported to the United States, or consumed in the island, shall be covered into the treasury of Puerto Rico.

(b) *Virgin Islands*—(1) *Taxes imposed in the United States.* Except as provided in section 5314, there shall be imposed in the United States, upon articles coming into the United States from the Virgin Islands, a tax equal to the internal revenue tax imposed in the United States upon like articles of domestic manufacture.

(2) *Exemption from tax imposed in the Virgin Islands.* Such articles shipped from such islands to the United States shall be exempt from the payment of any tax imposed by the internal revenue laws of such islands.

(3) *Disposition of internal revenue collections.* Beginning with the fiscal year ending June 30, 1954, and annually thereafter, the Secretary or his delegate shall determine the amount of all taxes imposed by, and collected during the fiscal year under, the internal revenue laws of the United States on articles produced in the Virgin Islands and transported to the United States. The amount so determined less 1 percent and less the estimated amount of refunds or credits shall be subject to disposition as follows:

(A) There shall be transferred and paid over to the government of the Virgin Islands from the amounts so determined a sum equal to the total amount of the revenue collected by the government of the Virgin Islands during the fiscal year, as certified by the Government Comptroller of the Virgin Islands. The moneys so transferred and paid over shall constitute a separate fund in the treasury of the Virgin Islands and may be expended as the legislature may determine: *Provided*, That the approval of the President or his designated representative shall be obtained before such moneys may be obligated or expended.

(B) There shall also be transferred and paid over to the government of the Virgin Islands during each of the fiscal years ending June 30, 1955, and June 30, 1956, the sum of $1,000,000 or the balance of the internal revenue collections available under this paragraph (3) after payments are made under subparagraph (A), whichever amount is greater. The moneys so transferred and paid over shall be deposited in the separate fund established by subparagraph (A), but shall be obligated or expended for emergency purposes and essential public projects only, with the prior approval of the President or his designated representative.

(C) Any amounts remaining shall be deposited in the Treasury of the United States as miscellaneous receipts.

If at the end of any fiscal year the total of the Federal contribution made under subparagraph (A) at the beginning of that fiscal year has not been obligated or expended for an approved purpose, the balance shall continue available for expenditure during any succeeding fiscal year, but only for approved emergency relief purposes and essential public projects as provided in subparagraph (B). The aggregate amount of moneys available for expenditure for emergency relief purposes and essential public projects only, including payments under subparagraph (B), shall not exceed the sum of $5,000,000 at the end of any fiscal year. Any unobligated or unexpended balance of the Federal contribution remaining at the end of a fiscal year which would cause the moneys available for emergency relief purposes and essential public projects only to exceed the sum of $5,000,000 shall thereupon be transferred and paid over to the Treasury of the United States as miscellaneous receipts.

[Sec. 7652 as amended by sec. 204 (17), (18), Excise Tax Technical Changes Act 1958 (72 Stat. 1430)]

§ 301.7652–1 Shipments to the United States.

For regulations under section 7652, see Part 179 of this chapter, relating to machine guns and certain other firearms; Part 250 of this chapter, relating to liquors and articles from Puerto Rico and the Virgin Islands; Part 280 of this chapter, relating to dealers in tobacco materials; Part 285 of this chapter, relating to cigarette papers and tubes; and Part 296 of this chapter, relating to tobacco products.

§ 301.7653 Statutory provisions; shipments from the United States.

SEC. 7653. *Shipments from the United States*—(a) *Tax imposed*—(1) *Puerto Rico.* All articles of merchandise of United States manufacture coming into Puerto Rico shall be entered at the port of entry upon payment of a tax equal in rate and amount to the internal revenue tax imposed in Puerto Rico upon the like articles of Puerto Rican manufacture.

(2) *Virgin Islands.* There shall be imposed in the Virgin Islands upon articles imported from the United States a tax equal to the internal revenue tax imposed in such islands upon like articles there manufactured.

(b) *Exemption from tax imposed in the United States.* Articles, goods, wares, or merchandise going into Puerto Rico, the Virgin Islands, Guam, and American Samoa from the United States shall be exempted from the payment of any tax imposed by the internal revenue laws of the United States.

(c) *Drawback of tax paid in the United States.* All provisions of law for the allowance of drawback of internal revenue tax on articles exported from the United States are, so far as applicable, extended to like articles upon which an internal revenue tax has been paid when shipped from the United States to Puerto Rico, the Virgin Islands, Guam, or American Samoa.

(d) *Cross reference.* For the disposition of the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in Guam and transported into the United States or its possessions, or consumed in Guam, see the Act of August 1, 1950 (c. 512, 64 Stat. 392, section 30; 48 U.S.C. 1421h).

[Sec. 7653 as amended by sec. 22(f), Alaska Omnibus Act (73 Stat. 146); sec. 18(h), Hawaii Omnibus Act (74 Stat. 416)]

§ 301.7653–1 Shipments from the United States.

For regulations under section 7653, see Part 179 of this chapter, relating to machine guns and certain other firearms; Part 196 of this chapter, relating to

stills; Part 252 of this chapter, relating to exportation of liquors; Part 285 of this chapter, relating to cigarette papers and tubes; and Part 290 of this chapter, relating to the withdrawal of tobacco materials, tobacco products, and cigarette papers and tubes.

§ 301.7654 Statutory provisions; payment to Guam and American Samoa of proceeds of tax on coconut and palm oil.

SEC. 7654. *Payment to Guam and American Samoa of proceeds of tax on coconut and palm oil.* All taxes collected under subchapter B of chapter 37 with respect to coconut oil wholly of the production of Guam or American Samoa, or produced from materials wholly of the growth or production of Guam or American Samoa, shall be held as separate funds and paid to the treasury of Guam or American Samoa, respectively. No part of the money from such funds shall be used, directly or indirectly, to pay a subsidy to the producers or processors of copra, coconut oil, or allied products, except that this sentence shall not be construed as prohibiting the use of such money, in accordance with regulations prescribed by the Secretary or his delegate, for the acquisition or construction of facilities for the better curing of copra or for bona fide loans to copra producers of Guam or American Samoa.

§ 301.7655 Statutory provisions; cross references.

SEC. 7655. *Cross references*—(a) *Imposition of tax in possessions.* For provisions imposing tax in possessions, see—

(1) Chapter 2, relating to self-employment tax;

(2) Chapter 21, relating to the tax under the Federal Insurance Contributions Act;

(3) Parts I and III of subchapter A of chapter 39, relating to taxes in respect of narcotic drugs;

(4) Parts II and III of subchapter A of chapter 39, relating to taxes in respect of marihuana;

(5) Subchapter A of chapter 37, relating to tax on sugar.

(b) *Other provisions.* For other provisions relating to possessions of the United States, see—

(1) Section 933, relating to income tax on residents of Puerto Rico;

(2) Section 6418(b), relating to exportation of sugar to Puerto Rico.

[Sec. 7655 as amended by sec. 204(19), Excise Tax Technical Changes Act 1958 (72 Stat. 1430)]

Definitions

§ 301.7701 [Reserved]

General Rules

APPLICATION OF INTERNAL REVENUE LAWS

§ 301.7801 Statutory provisions; authority of the Department of the Treasury.

SEC. 7801. *Authority of the Department of the Treasury*—(a) *Powers and duties of Secretary.* Except as otherwise expressly provided by law, the administration and enforcement of this title shall be performed by or under the supervision of the Secretary of the Treasury.

(b) *Office of General Counsel for the Department*—(1) *General Counsel.* There shall be in the Department of the Treasury the office of General Counsel for the Department of the Treasury. The General Counsel shall be appointed by the President, by and with the advice and consent of the Senate. The General Counsel shall be the chief law officer of the Department and shall perform such duties as may be prescribed by the Secretary.

(2) *Assistant General Counsels.* The President is authorized to appoint, by and with the advice and consent of the Senate, an Assistant General Counsel who shall be the Chief Counsel for the Internal Revenue Service and shall receive basic compensation at the annual rate of $19,000. The Chief Counsel shall be the chief law officer for the Internal Revenue Service and shall perform such duties as may be prescribed by the Secretary. The Secretary may appoint, without regard to the provisions of the civil service laws, and fix the duties of not to exceed five other assistant General Counsels.

(3) *Attorneys.* The Secretary may appoint and fix the duties of such other attorneys as he may deem necessary.

(c) *Functions of Department of Justice unaffected.* Nothing in this section shall be considered to affect the duties, powers, or functions imposed upon, or vested in, the Department of Justice, or any officer thereof, by law existing on May 10, 1934.

[Sec. 7801 as amended by Act of Sept. 22, 1959 (Pub. Law 86-368, 73 Stat. 647)]

§ 301.7802 Statutory provisions; Commissioner of Internal Revenue.

SEC. 7802. *Commissioner of Internal Revenue.* There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary.

§ 301.7803 Statutory provisions; other personnel.

SEC. 7803. *Other personnel*—(a) *Appointment and supervision.* The Secretary or his delegate is authorized to employ such number of persons as the Secretary or his delegate deems proper for the administration and enforcement of the internal revenue laws, and the Secretary or his delegate shall issue all necessary directions, instructions, orders, and rules applicable to such persons.

(b) *Posts of duty of employees in field service or traveling*—(1) *Designation of post of duty.* The Secretary or his delegate shall determine and designate the posts of duty of all such persons engaged in field work or traveling on official business outside of the District of Columbia.

(2) *Detail of personnel from field service.* The Secretary or his delegate may order any such person engaged in field work to duty in the District of Columbia, for such periods as the Secretary or his delegate may prescribe, and to any designated post of duty outside the District of Columbia upon the completion of such duty.

(c) *Bonds of employees.* Whenever the Secretary or his delegate deems it proper, he may require any such officer or employee to furnish such bond, or he may purchase such blanket or schedule bonds, as the Secretary or his delegate deems appropriate. The premium of any such bond or bonds may, in the discretion of the Secretary or his delegate, be paid from the appropriation for expenses of the Internal Revenue Service.

(d) *Delinquent internal revenue officers and employees.* If any officer or employee of the Treasury Department acting in connection with the internal revenue laws fails to account for and pay over any amount of money or property collected or received by him in connection with the internal revenue laws, the Secretary or his delegate shall issue notice and demand to such officer or employee for payment of the amount which he failed to account for and pay over, and, upon failure to pay the amount demanded within the time specified in such notice, the amount so demanded shall be deemed imposed upon such officer or employee and assessed upon the date of such notice and demand, and the provisions of chapter 64 and all other provisions of law relating to the collection of assessed taxes shall be applicable in respect of such amount.

[Sec. 7803(c) was superseded by Act of Aug. 9, 1955 (Pub. Law 323, 84th Cong., 69 Stat. 618) effective as of Jan. 1, 1956]

§ 301.7803–1 Surety bonds covering personnel of the Internal Revenue Service.

For regulations relating to the procurement of surety bonds covering designated personnel of the Internal Revenue Service after January 1, 1956, see 31 CFR Part 226.

§ 301.7804 Statutory provisions; effect of reorganization plans.

SEC. 7804. *Effect of reorganization plans*—(a) *Application.* The provisions of Reorganization Plan Numbered 26 of 1950 and Reorganization Plan Numbered 1 of 1952 shall be applicable to all functions vested by this title, or by any act amending this title (except as otherwise expressly provided in such amending act), in any officer, employee, or agency, of the Department of the Treasury.

(b) *Preservation of existing rights and remedies.* Nothing in Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952 shall be considered to impair any right or remedy, including trial by jury, to recover any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws. For the purpose of any action to recover any such tax, penalty, or sum, all statutes, rules, and regulations referring to the collector of internal revenue, the principal officer for the internal revenue district, or the Secretary or his delegate, shall be deemed to refer to the officer whose act or acts referred to in the preceding sentence gave rise to such action. The venue of any such action shall be the same as under existing law.

§ 301.7805 Statutory provisions; rules and regulations.

SEC. 7805. *Rules and regulations*—(a) *Authorization.* Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary or his delegate shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity of regulations or rulings.* The Secretary or his delegate may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.* The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

§ 301.7805–1 Rules and regulations.

(a) *Issuance.* The Commissioner, with the approval of the Secretary, shall prescribe all needful rules and regulations for the enforcement of the Code (except where this authority is expressly given by the Code to any person other than an officer or employee of the Treasury Department), including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity.* The Commissioner, with the approval of the Secretary, may prescribe the extent, if any, to which any regulation or Treasury decision relating to the internal revenue laws shall be applied without retroactive effect. The Commissioner may prescribe the extent, if any, to which any ruling relating to the internal revenue laws, issued by or pursuant to authorization from him, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.* The Commissioner, under the direction of the Secretary, shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

§ 301.7806 Statutory provisions; construction of title.

SEC. 7806. *Construction of title*—(a) *Cross references.* The cross references in this title to other portions of the title, or other provisions of law, where the word "see" is used, are made only for convenience, and shall be given no legal effect.

(b) *Arrangement and classification.* No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law.

§ 301.7807 Statutory provisions; rules in effect upon enactment of this title.

SEC. 7807. *Rules in effect upon enactment of this title*—(a) *Interim provision for administration of title.* Until regulations are promulgated under any provision of this title which depends for its application upon the promulgation of regulations (or which is to be applied in such manner as may be prescribed by regulations) all instructions, rules or regulations which are in effect immediately prior to the enactment of this title shall, to the extent such instructions, rules, or regulations could be prescribed as regulations under authority of such provision, be applied as if promulgated as regulations under such provision.

(b) *Provisions of this title corresponding to prior internal revenue laws*—(1) *Reference to law applicable to prior period.* Any provision of this title which refers to the application of any portion of this title to a prior period (or which depends upon the application to a prior period of any portion of this title) shall, when appropriate and consistent with the purpose of such provision, be deemed to refer to (or depend upon the application of) the corresponding provision of the Internal Revenue Code of 1939 or of such other internal revenue laws as were applicable to the prior period.

(2) *Election or other acts.* If an election or other act under the provisions of the Internal Revenue Code of 1939 would, if this title had not been enacted, be given effect for a period subsequent to the date of enactment of this title, and if corresponding provisions are contained in this title, such election or other act shall be given effect under the corresponding provisions of this title.

§ 301.7808 Statutory provisions; depositaries for collections.

SEC. 7808. *Depositaries for collections.* The Secretary or his delegate is authorized to designate one or more depositaries in each State for the deposit and safe-keeping of the money collected by virtue of the internal revenue laws; and the receipt of the proper officer of such depositary to the proper officer or employee of the Treasury Department for the money deposited by him shall be a sufficient voucher for such Treasury officer or employee in the settlement of his accounts.

§ 301.7809 Statutory provisions; deposit of collections.

SEC. 7809. *Deposit of collections*—(a) *General rule.* Except as provided in subsection (b), sections 4735, 4762, 7651, 7652, and 7654, the gross amount of all taxes and revenues received under the provisions of this title, and collections of whatever nature received or collected by authority of any internal revenue law, shall be paid daily into the Treasury of the United States under instructions of the Secretary or his delegate as internal revenue collections, by the officer or employee receiving or collecting the same, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description. A certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the Treasurer of the United States, designated depositary, or proper officer of a deposit bank, shall be transmitted to the Secretary or his delegate.

(b) *Deposit funds.* In accordance with instructions of the Secretary or his delegate, there shall be deposited with the Treasurer of the United States in a deposit fund account—

(1) *Sums offered in compromise.* Sums offered in compromise under the provisions of section 7122;

(2) *Sums offered for purchase of real estate.* Sums offered for the purchase of real estate under the provisions of section 7506; and

(3) *Surplus proceeds in sales under levy.* Surplus proceeds in any sale under levy, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for costs and charges of the levy and sale.

Upon the acceptance of such offer in compromise or offer for the purchase of such real estate, the amount so accepted shall be withdrawn from such deposit fund account and deposited in the Treasury of the United States as internal revenue collections. Upon the rejection of any such offer, the Secretary or his delegate shall refund to the maker of such offer the amount thereof.

EFFECTIVE DATE AND RELATED PROVISIONS

§ 301.7851 Statutory provisions; applicability of revenue laws.

SEC. 7851. *Applicability of revenue laws*—(a) *General rules.* Except as otherwise provided in any section of this title—

(1) *Subtitle A.* (A) Chapters 1, 2, 4, and 6 of this title shall apply only with respect to taxable years beginning after December 31, 1953, and ending after the date of enactment of this title, and with respect to such taxable years, chapters 1 (except sections 143 and 144) and 2, and section 3801, of the Internal Revenue Code of 1939 are hereby repealed.

(B) Chapters 3 and 5 of this title shall apply with respect to payments and transfers occurring after December 31, 1954, and as to such payments and transfers sections 143 and 144 and chapter 7 of the Internal Revenue Code of 1939 are hereby repealed.

(C) Any provision of subtitle A of this title the applicability of which is stated in terms of a specific date (occurring after December 31, 1953), or in terms of taxable years ending after a specific date (occurring after December 31, 1953), shall apply to taxable years ending after such specific date. Each such provision shall, in the case of a taxable year subject to the Internal Revenue Code of 1939, be deemed to be included in the Internal Revenue Code of 1939, but shall be applicable only to taxable years ending after such specific date. The provisions of the Internal Revenue Code of 1939 superseded by provisions of subtitle A of this title the applicability of which is stated in terms of a specific date (occurring after December 31, 1953) shall be deemed to be included in subtitle A of this title, but shall be applicable only to the period prior to the taking effect of the corresponding provision of subtitle A.

(D) Effective with respect to taxable years ending after March 31, 1954, and subject to tax under chapter 1 of the Internal Revenue Code of 1939—

(i) Sections 13(b)(3), 26(b)(2)(C), 26(h)(1)(C) (including the comma and the word "and" immediately preceding such section), 26(i)(3), 108(k), 207(a)(1)(C), 207(a)(3)(C), and the last sentence of section 362(b)(3) of such Code are hereby repealed; and

(ii) Sections 13(b)(2), 26(b)(2)(B), 26(h)(1)(B), 26(i)(2), 207(a)(1)(B), 207(a)(3)(B), 421(a)(1)(B), and the second sentence of section 362(b)(3) of such Code are hereby amended by striking out "and before April 1, 1954" (and any accompanying punctuation) wherever appearing therein.

(2) *Subtitle B.* (A) Chapter 11 of this title shall apply with respect to estates of decedents dying after the date of enactment of this title, and with respect to such estates chapter 3 of the Internal Revenue Code of 1939 is hereby repealed.

(B) Chapter 12 of this title shall apply with respect to the calendar year 1955 and all calendar years thereafter, and with respect to such years chapter 4 of the Internal Revenue Code of 1939 is hereby repealed.

(3) *Subtitle C.* Subtitle C of this title shall apply only with respect to remuneration paid after December 31, 1954, except that chapter 22 of such subtitle shall apply only with respect to remuneration paid after December 31, 1954, which is for services performed after such date. Chapter 9 of the Internal Revenue Code of 1939 is hereby repealed with respect to remuneration paid after December 31, 1954, except that subchapter B of such chapter (and subchapter E of such chapter to the extent it relates to subchapter B) shall remain in force and effect with respect to remuneration paid after December 31, 1954, for services performed on or before such date.

(4) *Subtitle D.* Subtitle D of this title shall take effect on January 1, 1955. Subtitles B and C of the Internal Revenue Code of 1939 (except chapters 7, 9, 15, 26, and 28, subchapter B of chapter 25, and parts VII and VIII of subchapter A of chapter 27 of such code) are hereby repealed effective January 1, 1955. Provisions having the same effect as section 6416(b)(2)(H), and so much of section 4082(c) as refers to special motor fuels, shall be considered to be included in the Internal Revenue Code of 1939 effective as of May 1, 1954. Section 2450(a) of the Internal Revenue Code of 1939 (as amended by the Excise Tax Reduction Act of 1954)

applies to the period beginning on April 1, 1954, and ending on December 31, 1954.

(5) *Subtitle E.* Subtitle E shall take effect on January 1, 1955, except that the provisions in section 5411 permitting the use of a brewery under regulations prescribed by the Secretary or his delegate for the purpose of producing and bottling soft drinks, section 5554, and chapter 53 shall take effect on the day after the date of enactment of this title. Subchapter B of chapter 25, and part VIII of subchapter A of chapter 27, of the Internal Revenue Code of 1939 are hereby repealed effective on the day after the date of enactment of this title. Chapters 15 and 26, and part VII of subchapter A of chapter 27, of the Internal Revenue Code of 1939 are hereby repealed effective January 1, 1955.

(6) *Subtitle F*—(A) *General rule.* The provisions of subtitle F shall take effect on the day after the date of enactment of this title and shall be applicable with respect to any tax imposed by this title. The provisions of subtitle F shall apply with respect to any tax imposed by the Internal Revenue Code of 1939 only to the extent provided in subparagraphs (B) and (C) of this paragraph.

(B) *Assessment, collection, and refunds.* Notwithstanding the provisions of subparagraph (A), and notwithstanding any contrary provision of subchapter A of chapter 63 (relating to assessment), chapter 64 (relating to collection), or chapter 65 (relating to abatements, credits, and refunds) of this title, the provisions of part II of subchapter A of chapter 28 and chapters 35, 36, and 37 (except section 3777) of subtitle D of the Internal Revenue Code of 1939 shall remain in effect until January 1, 1955, and shall also be applicable to the taxes imposed by this title. On and after January 1, 1955, the provisions of subchapter A of chapter 63, chapter 64, and chapter 65 (except section 6405) of this title shall be applicable to all internal revenue taxes (whether imposed by this title or by the Internal Revenue Code of 1939), notwithstanding any contrary provision of part II of subchapter A of chapter 28, or of chapter 35, 36, or 37, of the Internal Revenue Code of 1939. The provisions of section 6405 (relating to reports of refunds and credits) shall be applicable with respect to refunds or credits allowed after the date of enactment of this title, and section 3777 of the Internal Revenue Code of 1939 is hereby repealed with respect to such refunds and credits.

(C) *Taxes imposed under the 1939 code.* After the date of enactment of this title, the following provisions of subtitle F shall apply to the taxes imposed by the Internal Revenue Code of 1939, notwithstanding any contrary provisions of such code:

(i) Chapter 73, relating to bonds.

(ii) Chapter 74, relating to closing agreements and compromises.

(iii) Chapter 75, relating to crimes and other offenses, but only insofar as it relates to offenses committed after the date of enactment of this title, and in the case of such offenses, section 6531, relating to periods of limitation on criminal prosecution, shall be applicable. The penalties (other than penalties which may be assessed) provided by the Internal Revenue Code of 1939 shall not apply to offenses, committed after the date of enactment of this title, to which chapter 75 of this title is applicable.

(iv) Chapter 76, relating to judicial proceedings.

(v) Chapter 77, relating to miscellaneous provisions, except that section 7502 shall apply only if the mailing occurs after the date of enactment of this title, and section 7503 shall apply only if the last date referred to therein occurs after the date of enactment of this title.

(vi) Chapter 78, relating to discovery of liability and enforcement of title.

(vii) Chapter 79, relating to definitions.

(viii) Chapter 80, relating to application of internal revenue laws, effective date, and related provisions.

(D) *Chapter 28 and subtitle D of 1939 code.* Except as otherwise provided in subparagraphs (B) and (C), the provisions of chapter 28 and of subtitle D of the Internal Revenue Code of 1939 shall remain in effect with respect to taxes imposed by the Internal Revenue Code of 1939.

(7) *Other provisions.* If the effective date of any provision of the Internal Revenue Code of 1954 is not otherwise provided in this section or in any other section of this title, such provision shall take effect on the day after the date of enactment of this title. If the repeal of any provision of the Internal Revenue Code of 1939 is not otherwise provided by this section or by any other section of this title, such provision is hereby repealed effective on the day after the date of enactment of this title.

(b) *Effect of repeal of Internal Revenue Code of 1939*—(1) *Existing rights and liabilities.* The repeal of any provision of the Internal Revenue Code of 1939 shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before such repeal; but all rights and liabilities under such code shall continue, and may be enforced in the same manner, as if such repeal had not been made.

(2) *Existing offices.* The repeal of any provision of the Internal Revenue Code of 1939 shall not abolish, terminate, or otherwise change—

(A) Any internal revenue district,

(B) Any office, position, board, or committee, or

(C) The appointment or employment of any officer or employee,

existing immediately preceding the enactment of this title, the continuance of which is not manifestly inconsistent with any provision of this title, but the same shall continue unless and until changed by lawful authority.

(3) *Existing delegations of authority.* Any delegation of authority made pursuant to the provisions of Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952, including any redelegation of authority made pursuant to any such delegation of authority, and in effect under the Internal Revenue Code of 1939 immediately preceding the enactment of this title shall, notwithstanding the repeal of such code, remain in effect for purposes of this title, unless distinctly inconsistent or manifestly incompatible with the provisions of this title. The preceding sentence shall not be construed as limiting in any manner the power to amend, modify, or revoke any such delegation or redelegation of authority.

(c) *Crimes and forfeitures.* All offenses committed, and all penalties or forfeitures incurred, under any provision of law hereby repealed, may be prosecuted and punished in the same manner and with the same effect as if this title had not been enacted.

(d) *Periods of limitation.* All periods of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, hereby repealed shall not be affected thereby, but all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising, or acts done or committed, prior to said repeal, may be commenced and prosecuted within the same time as if this title had not been enacted.

(e) *Reference to other provisions.* For the purpose of applying the Internal Revenue Code of 1939 or the Internal Revenue Code of 1954 to any period, any reference in either such code or another provision of the Internal Revenue Code of 1939 or the Internal Revenue Code of 1954 which is not then applicable to such period shall be deemed a reference to the corresponding provision of the other code which is then applicable to such period.

§ 301.7852 Statutory provisions; other applicable rules.

SEC. 7852. *Other applicable rules*—(a) *Separability clause.* If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(b) *Reference in other laws to Internal Revenue Code of 1939.* Any reference in any other law of the United States or in any Executive order to any provision of the Internal Revenue Code of 1939 shall, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, be deemed also to refer to the corresponding provision of this title.

(c) *Items not to be twice included in income or deducted therefrom.* Except as otherwise distinctly expressed or manifestly intended, the same item (whether of income, deduction, credit, or otherwise) shall not be taken into account both in computing a tax under subtitle A of this title and a tax under chapter 1 or 2 of the Internal Revenue Code of 1939.

(d) *Treaty obligations.* No provision of this title shall apply in any case where its application would be contrary to any treaty obligation of the United States in effect on the date of enactment of this title.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: October 17, 1960.

DAVID A. LINDSAY,
Acting Secretary of the Treasury.

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